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Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

No. _____

MAURA BURCHE,

Appellant,

v.

CATERPILLAR TRACTOR CO.,

Appellee.

ON APPEAL FROM THE UNITED STATES COURT
OF APPEALS FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS

MAURA BURCHE
5210 Division Street
Davenport, IA 52806
Telephone: (319)386-4736

Appellant Pro Se

266 P

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QUESTION PRESENTED

1. Were the rights of Maura Burche under the Fourteenth Amendment to the Constitution of United States violated by the Trial Court's decision by not providing equal protection of law, denying her case, and accepting the employment discrimination?

2.In light of U.S. Court of Appeals Order when first considered the case, No.81-2580, of May 16, 1983 that:

> "Judging Plaintiff's complaint by less stringent standards, we find that she has successfully pleaded a Title VII claim,.."more informations necessary to defend the claim may be determined through discovery".."The District Court erred in dismissing Plaintiff's complaint;"

considering also that Appellant is fighting in courts years long, illegal, perseverent, ruthless discrimination in employment, which caused Appellant substantial, irreparable emotional sufferances and material damages, did U.S. Court of Appeal erred in denying

her "Motion to Reinstate Appeal" without considering the evidence and circumstances of Appellant's discrimination?

3. Having knowledge: that Appellant's attorney, in fact is guilty of malpractice abandoning Appellant's case without any notice, that Appellant had no fault and that she dismissed her attorney, as soon she found out about such malpractice, did the above court erred in allowing technicalities to deprive Appellant of a judgement on her Appeal, knowing also that through such denial did encourage discrimination in employment, because of sex and national origin?

INDEX

QUESTIONS PRESENTED..... 2

TABLE OF AUTHORITIES..... 7

JURISDICTIONAL STATEMENT..... 10

OPINIONS BELOW..... 12

JURISDICTION..... 14

CONSTITUTIONAL PROVISIONS AND RULES 15

RAISING THE FEDERAL QUESTION..... 15

STATEMENT OF FACTS..... 16

CONCLUSION..... 48

CERTIFICATE OF SERVICE..... 55

APPENDICES:

APPENDIX A (U.S.Supreme Court Order for Time Extention to File Docket of Appeal) A1

APPENDIX B (Appellant's Credit Hours for Computer Class) B1

APPENDIX C (Denial of Action to Reinstate the Appeal to U.S. Court of Appeal) C1

APPENDIX D (Motion to Reinstate the Appeal to U.S. Court of Appeals) D1

APPENDIX E (Dismissal of Notice of Appeal by U.S.Court of Appeals) E1

APPENDIX F (Notice of Appeal to U.S. Court of Appeals) F1

APPENDIX G (Dismissal of Case by U.S. District Court) G1

APPENDIX H (Attorney's Retainer Agreement) H1

APPENDIX I (U.S. Court of Appeals Order Remanding the Case to the District Court) K1

APPENDIX L (Appellant's Letter Sent to FEPC) L1

APPENDIX M (FEPC Letter for Conciliation) M1

APPENDIX N (Appellee's Letter Sent to FEPC) N1

APPENDIX O (FEPC Investigation Report) O1

APPENDIX P (Appellee's Letter to Dismiss Appellant After Her Refusal to Accept the Job Class II Clerk) P1

APPENDIX Q (Appellant Refusal to Accept

Job Offer as Class II Clerk) Q1

APPENDIX R (Appellee's Job Offer) R1

Appendix S (Information Sent to FEPC by Appellee About Some Employees Hired Between 10/1978 to 3/1979 S1

APPENDIX T (Appellant's Claim to FEPC) T1

APPENDIX U (Appellee's Letter to Various Departments of Its Plants) U1

APPENDIX V (Appellant's Diploma in Chemical Engineering) V1

TABLE OF AUTHORITIES

I. CASES

	Page
Brunetti v Wall Mart Store, Inc., D.C. Ark 1981, 525, F. Supp. 1363	51
Cobble v Hot Spring School District No. 6, C.A. Ark. 1982, 682, F2d, 721	41
Fisher v Procter and Gamble Manufacturing Co., 613, F.2d., 527 / 5th Cir. 1980	22
Grove v Frostburg Nat. Bank, D.C. Md. 1982 549, F. Supp. 922	53
Henson v City of Dundee, C.A. Fla. 1982, 682 F.2d., 897	22
Katz v Dole, C.A. Va 1983, 709, F.2d., 251	29
Mack v W. R. Grace Co., D.C. Ga. 1983, 578, F. Supp. 626	48
Meyers v I.T.T. Diversified Credit Corp., D.C. Mo 1981, 527 F. Supp. 1064	45
Muldrew v Anhenser - Bush Inc., D.C. Mo 1982, 554, F. Supp. affirmed 728 F.2d. 989	50
Paterson v Youngstown Sheet and Tube Co., C.A. Ind. 1981, 659, F.2d. 736, certiorari denied 102 S. Ct. 674, rehearing denied 102 S. Ct. 1494.	52
Richardson v Restaurant Marketing Associates, Inc., D.C. Col. 1981, 527 F. Supp. 690	53

Rimedio v Revlon Inc, D.C. Ohio, 1982, 528, F. Supp. 1380. 35

Schulte v Wilson Ind., Inc., D.C. Tex. 1982, 547, F. Supp. 324 35

Scott v Oce Ind., Inc., D.C. Fl. 1982, 536, F. Supp 141 52

Sorrells v Veterans Adm., D.C. Ohio, 1983, 576 F. Supp. 1254 52

Spagnuolo v Whirlpool Corp., D.C. N.C. 1982, 548 F. Supp. 104, Affirmed in part, reversed in part on other grounds 717 F.2d. 114 35

Thompson v Sawyer, 1982, 678, F.2d., 257, 219, U.S App. D.C. 393 25

United Airlines v Evans, 431 U.S. 553 (1977) 22

Whalley v Skaggs Companies, Inc., C.A. Colo. 1983, 707 F.2d 1129, certiorari denied 104 S. Ct. 349 50

Williams v Boorstin, 1980, 633, F.2d., 109, 213 U.S. App. D.C. . . . 345, certiorari denied, 102 S. Ct. 2319, 451, U.S. 985, 68 L Ed. 2d. 842 45

'Williams v Trans World Airline Inc., C.A. MO 1981,660, F.2d.1267.. 51

Zabcovici v W. Bend Co.,D.C. Wis. 1984,589 F. Supp. 780. 30

II. STATUTES

Title VII Civil Rights Act 1964

U.S.C.A. 28,1254 (27), (65), (66) (73),(192), (206)

U.S.C.A. 28,2680 (14), (57)

U.S.C.A. 42, 2000e et seq.

III. CONSTITUTION

United States Constitution

ArticleIII, Section2

United States Constitution

Fourteen Amendment, Section 7

IN THE

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ON APPEAL FROM THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT, CHICAGO, ILLINOIS

JURISDICTIONAL STATEMENT

Maura Burche, the appellant pro-se, appeals from the order of United States Court of Appeals for the Seventh Circuit Chicago, Illinois, dated May 22, 1985, denying appellant's "Motion to Reinstate the Appeal" holding that the denial is not

constitutional as being violative of appellant's rights under Title VII Civil Rights Act, 42 U.S.C.A. Sec. 2000e et seq. The Appeal 81-2580 was dismissed on November 27, 1984 for lack of prosecution.

The Appellant's case, which is a poignant case of employment discrimination, was poorly prosecuted, ignored and finally abandoned by Appellant's Attorney Paul Kuster of Peoria, who despite a written agreement to pursue the case, letters, and telephone calls, never contacted the Appellant from the date "Notice of Appeal" was filed in U.S. Court of Appeals on 5-12-1984. The Appellant's attorney is guilty of lack of prosecution and malpractice. Also in dismissing the case the court didn't take in consideration the history of this cruel case of discrimination and severe emotional and material damages.

U.S. Court of Appeal denying Appellant's "Motion to Reinstate the Appeal" deprived Appellant of

her constitutional rights to seek equal protection of law guaranteed by Fourteenth Amendment, Section 1 of U.S. Constitution, by Article III, Section 2 U.S. Constitution, Title VII Civil Rights Act 1964, 42 U.S.C.A. 2000e et seq.

OPINION BELOW

1. The opinion of U.S. District Court at first consideration of case on September 17, 1981, entered a Judgement dismissing the complaint of Plaintiff-Appellant, with prejudice on all grounds presented by Defendant-Appellee.

2. The opinion of U.S. Court of Appeal for the Seventh Circuit Chicago, Illinois, at first consideration of case on Mar 16, 1983 (Appx. I) remanded the case to the U.S. District Court for reconsideration concluding that Plaintiff-Appellant succeeded in pleading a Title VII claim and that court erred in dismissing the case.

3. Opinion of U.S. District Court at second consideration of case on Apr. 12, 1984 "entered a

verdict in favor of Defendant and against Plaintiff" (Appx. G), was appealed on May 12, 1984 by Appellant (Appx. F).

4. Opinion of U.S. Court of Appeal at second consideration of case dismissed the appeal "for lack of prosecution" on Nov. 27, 1984, (Appx. E). Appellant contested the dismissal through "Motion to Reinstate the Appeal" on 5-13-85 (Appx. D).

5. Opinion of U.S. States Court of Appeals for the Seventh Circuit, Chicago, Illinois, of May 22, 1985 (Appx. C) denying Appellant's "Motion to Reinstate the Appeal", was contested by Appellant in U.S. Supreme Court, October Term 1985, through "Application For Extension to File a Notice of Appeal and to Docket Appeal" on Jul. 9, 1985.

6. U.S. Supreme Court ordered on July 25, 1985 that the time to file Writ of Certiorari and/or for docketing an appeal be extended to Sept 22, 1985 (Appx. A).

JURISDICTION

U.S. Court of Appeals for the Seventh Circuit, Chicago, Illinois, denied Appellant's " Motion to Reinstate the Appeal" on May 22, 1985.

Appellant filed in U.S. Supreme Court on July 3, 1985 an " Application for Extention to File a Notice of Appeal and to Docket Appeal ". Such application has been accepted by the U.S. Supreme Court, establishing Sept. 22, 1985, deadline for docketing of appeal.

The jurisdiction of this Court is invoked under 28 U.S.C.A. 1254 (27), (65), (66), (73), (192), (206), and 28 U.S.C.A. 2680 (14), (57).

CONSTITUTIONAL PROVISIONS AND RULES

Constitution of U.S. Article III, Section 2:

"The judicial power of the federal courts includes all cases of law, criminal cases, civil cases and cases of equity (cases concerning asking for court action to prevent same wrong doing or end same wrong doing done) mentioned in the constitution".

42 U.S.C.A. Sec. 2000e - 5 Note 746:

"Congress is enacting this subchapter outlawing discrimination by employer on basis of race, sex, color, or national origin, intended federal courts to have resort to all of their traditional equity powers, direct and incidental, in aid of enforcement of this subchapter".

RAISING THE FEDERAL QUESTION

The decision of U.S. Court of Appeals for the Seventh Circuit, Chicago, Illinois, dismissing Appellant's "Motion to Reinstate the Appeal" was in fact an acceptance of Appellant's employment discrimination and acceptance of malpractice committed by Appellant's attorney.

Through the above decision Appellant's constitutional rights guaranteed by Article III, Section 2, and Fourteenth Amendment, Section 1 of U.S. Con-

stitution, have been infringed, therefore Appellant prays U.S. Supreme Court to reinstate full constitutional rights and dignity grossly infringed by the Appellee, and disregarded by inferior courts including U.S. Court of Appeal.

STATMENT OF FACTS

1. At the earlier stage of this claim Appellant filed on 11-9-1978 with Fair Employment Practices Commission (FEPC) a charge of harassment and discrimination in employment because of sex-female and national origin-Romanian, and failure to recall from medical leave (Appx. T).

2. Appellant asked FEPC through a letter dated 11-1-1979 (Appx. L) that Appellee shoudl eliminate any defamatory report attached to her file.

3. FEPC conciliatory letter, dated 10-23-1979, (Appx. M) demanded Appellee to give Appellant a good reference letter with the purpose of being used exclusively when prospective employers requested information about her; also "Expungement from

complainant's personnel file of material relating to complainant's termination".

This was a constant demand throughout the entire Appellant's claim. The concilatory efforts of FEPC failed.

4. On 10-1-1979 FEPC issued an "Investigation Report" (Appx. O) where it was found that Appellant was harassed and discriminated because of sex-female and national origin-Romanian, but such harassment lacked jurisdiction because Appellant's complaint was filed too late.

FEPC erred in dismissing Appellant's charge of discrimination and harassment because of sex and national origin due to technicalities.

5. On 11-30-1981 the administrative judge, Linda Krueger MacLachlan, dismissed the case (Appx. J). The judgement erred by not taking in consideration FEPC findings, the considerable emotional sufferances and material damages caused to Appellant by not granting her relief, job and backpay.

In Judge's Finding of Facts:J-6(3),J-7(4,5), J-8(9,10), J-9(13);, J-10(16) are errors which disregard the truth :Tire Development Lab, Building E is exclusively for rubber compounds testing where could work only qualified people. No one from other laboratories of Building E would have knowledge to work in this lab, or vice versa. Testing equipment for rubber was not scattered in all of Building E but only in four rooms,from thirty to forty rooms existent . Each of five to six laboratories had his own supervisor and technicians from different lab, did not interfere in work. Calton, Kapraun, Clemens never worked at proving grounds and Appellant could work in any of five to six labs in Building E without having contact with them. Statement J-8(9) is also false , Appellant was released to work in August, 1978.

6. On 11-17-1978, Equal Employment Opportunity Commission (EEOC), notified Appellant that her claim was found to be without reasonable cause.

7. On 5-4-1981, EEOC informed Appellant, pro-se at that time, about her "Right to Sue".

8. Appellant filed within 90 days, on Aug. 30, 1981, under Title VII, 42 U.S.C.A. Sec. 2000e et seq., a three counts complaint of: I) employment discrimination and harassment because of sex and national origin; II) failure to reinstate Appellant, after medical leave, in an equivalent job to her former job; III) preparation and dissemination of false, defamatory reports about Appellant's work, providing these reports to potential employers, preventing Appellant of finding any equivalent job (Appx. K).

9. U.S. District Court Judge Robert Morgan orally dismissed the case on 9/17/1981 after only 15 minutes of hearing. It was obvious that the Judge didn't intend to hear the case and his de-

cision to dismiss the case was made before he entered the court room, from the way he rejected any Appellant's attempt to plead her case. Appellant was deprived of her civil rights by not according her a relief.

10. On 9-24-1982 Appellant appealed her case of employment discrimination and obstruction of her constitutional rights to U.S. Court of Appeal. On May 16, 1983 the above court reversed U.S. District's Court Judgement (Appx. I) in favor of Appellee on Appellant Title VII claims, remanding the case for rehearing on two charges: A) Failure to reinstate Appellant in an equivalent job to her former job when she requested employment after her medical leave; B) Preparation of false, defamatory evaluations of Appellant's work by Appellee and furnishing them to employers, preventing Appellant from obtaining an equivalent employment to her old job.

11. The above charges were dismissed on Apr.

12, 1984, by U.S. District Court Judge Robert Morgan, (Appx. G) who denied Appellant's constitutional rights under Title VII and encouraged Appellant's discrimination by supporting Appellee's pretexual explanations.

12. "Notice of Appeal" (Appx. F) was filed on May 12, 1984 in U.S. Court of Appeals which was dismissed on Nov. 27, 1984, for "lack of prosecution" (Appx. E).

13. "Motion to Reinstate the Appeal" filed by Appellant pro-se, on 5-13-1985 (Appx. D) showed a flagrant malpractice done by Appellant's attorney, was denied on May 22, 1985 (Appx. C).

14. U.S. Court of Appeal erred in denying Appellant's "Motion to Reinstate the Appeal" depriving Appellant of her constitutional rights, in a ruthless case of employment discrimination, under Title VII, as is stated herein. A such denial should not have been made unless all discriminating charges, the totality of circumstances and Appel-

lee's history in discriminating Appellant have been considered.

> "Whether the harassment at work place is sufficiently severe and persistent to affect seriously pshychological well-being of employees is question to be determined with regard to totality of circumstances". Henson v. City of Dundee, C.A. Fla., 1982, 682, F.2d. 897.

> "(federal court) it properly might consider any action which took place as evidence of later discrimination" (Appx. I, p. 6).

> "The question of admisibility of discriminatory acts is left to the sound discretion of the trail court". United Airlines v. Evans, 431 U.S. 553 (1977); Fisher v. Procter and Gamble Manufacturing Co., 613 F.2d. 527 (5th Circ. 1980).

The U.S. Court of Appeal through its ruling (Appx. I) inspite of its latitude to consider all acts of discrimination during Appellant's employment, did choose to accept only those after April 1977, dismissing those prior April 1977. It would be unjust to accept, due to technicalities, only discriminatory acts after April 1977. The period prior April 1977 presented below in a succinct way

and shown also in (Appx. K) did have a high contribution to severe pshychological sufferences of Appellant. Consequently the Appellant prays the court to take in consideration the Appellant's discrimination for entire period of her employment and the error of inferior courts by not considering above discrimination.

I. Errors of Previous Courts in Disregarding Appellant's Discrimination During Her Work. Appellant states as follows:

1. The Appellant is a U.S. Citizen, resident of State of Iowa, City of Davenport, female of Romanian origin, entitled to protection from eployment discrimination under terms of Title VII of the Civil Rights Act of 1964.

2. Appellant was hired on 3-10-1975 by Appellee as Research Technician at Technical Center-Tire Development Laboratory, Bldg. E, Mossville, Illinois, with a pay of $287.20/week. Her duty was to design experimental rubber compounds and test them.

3. Appellee has its principal office located in Peoria, Illinois and has employees of such a number and for such a pericd as to be an "employer" within the meaning of Section 701(b) of the Act (42 U.S.C.A. Sec. 2000e-(b)).

4. The unlawful employment practices alleged herein were commited by Appellee within State of Illinois.

5. The Appellant during a six year law suit against Appellee has followed all legal channels allowed by U.S. Constitution, and that the claim is now under the jurisdiction of this Court.

6. Appellant has therefore instituted this action under Title VII, 42 U.S.C.A. Sec. 2000e et seq. Viewing the above legislation concerning discrimination, the decisions of federal courts are very adamant to discourage such practices and compensate the victims for their sufferances and losses.

"Courts are to be guided by complimentary

aims: discouraging employers from discrimination, and compensating discrimination's victim as fully as possible". Thompson v. Sawyer, 1982, 678, F.2d., 257, 219 U.S. App. D.C. 393.

7. The unlawful discrimination practices and harassment because of sex and national origin, commited by Appellant's boss Marion Calton and coworkers Hank Kapraun and Larry Clemens, started about 4 - 5 months from Appellant's employment and augmented to the point that became a harmful, scaring place to work as follows:

a. Kapraun and Clemens wrote sexual words like "I fuck you" on the machines Appellant was working.

b. They called her "Moose" and "Here comes the trouble".

c. Clemens drew a moose on Romania's map in laboratory and on machines, and simulated moose's sounds when she was passing by. They brought a stuffed head of a moose with a mortuary crown and told her they will bury the moose.

d. H. Kapraun menaced Appellant with fists

and screaming at her.

e.Clemens told her to go back to Romania and when she was passing by, he said: "Maybe I will kill myself".

f. Clemens made sexual, obscene comments to Kapraun about Appellant's 11 and 15 year old daugters without knowing them.

g. They spread rumors that Appellant is a drug and alcohol user, that she is a lesbian.

A Laboratory technician asked her if she is a drug user when she took a medication for kidney and bladder infection; Appellant received at home many letters asking her to seek help against alcohol abuse and drugs. Telephone was ringing at 2 A.M. and nobody was talking on the line scaring her children. The Appellant's life in such conditions was a nightmare.

h. Appellant's work was sabotaged continuously to show that she is not able to work; The machines were unset after Appellant qualibrated them to use

them. Such acts have been reported to Connie Fraser-Supervisor Personnel Department. Though the machines continued to be unset by Kapraun and Clemens, making Appellant's work almost impossible.

i. The tensile machine located upstairs of laboratory, had strong trepidations for months, only when Appellant worked with it, making impossible to read a diagram. Appellant informed Calton and Kapraun but they said that was nothing they could do because probably Appellant was doing something wrong and therefore she was not able to work. After several months a technician, Ernest Steinert fixed the paperroll which was travelling back and froth horizontally because a bolt was missing. The department had a repair shop for machines, Kapraun was in charge with machine maintenance, though the bolt has been taken away every time Appellant was working with tensile machine and nobody seemed to notice it for months. More, Calton was very angry when he found out Appellant was helped by Steinert.

j. It was very difficult for Appellant to obtain a machine to work. Calton told Appellant to write the date and hour when she needed the machine. When she complied with this demand and started to use the machine, Calton angerly told Appellant that even though she was scheduled to work with that machine, she had to give up always a machine when other co-workers needed it.

k. Clemens made out of rubber an excrement and told Appellant "This is you". Nobody should be allowed to wrk in such humiliating conditions. Other examples of harassment and sabotage are presented in (Appx. K).

l. While the above harassment was repeating continuously, Clemens and Kapraun were praised by Calton, given merit increases while Appellant was demoted from research technician to the duties of technician under Calton's explanation that "was too much work or strain for Appellant". After 6 months merit raise, Calton eliminated the Appellant from

any raise.

m. Appellant informed her boss M. Calton about illegal ruthless harassment about 4 months from her employment and since then very often, but he told Appellant that co-workers are joking and she is the one who troubles their work.

Appellant constructively informed Mr. Higgins, Chief of Personnel, Connie Fraser-Supervisor Personnel, Manager Robert Untz and Grawey, through letters, meetings, conversations, telephone calls, confirmed by C. Fraser during trial. In his reports Calton acknowledged Appellant's claims but took them in a very light manner-as jokes. (Appx. o - 18).

> "Harassment that creates offensive work environment, plaintiff must demonstrate that employer had actual or constructive knowledge of existence of sexual hostile work environment action and took no prompt and adequate remedial action". Katz v. Dole, C.A. Va 1983, 709, F.2d. 251.

n. The Appellee never took any step in erradicating discrimination against Appellant, never dis-

cipled L. Clemens, H. Kapraun or her boss M. Calton, Appellee never investigated this discrimination. More it was encouraged by designating Kapraun to investigate Appellant's discrimination, which gave him the opportunity to cover up the discrimination and continue it.

> "Female employee proved her claim of sexual harassment in view of evidence of unreasonable, sustained, malicious and brutal harassment by male employees, showing that although informed many times of the harassment, management never conducted an investigation or disciplined a single employee until after repeated complaints". Zabkovici v. W. Bend Co., D.C. Wis. 1984, 589 F. Supp. 780.

o. Appellant asked federal courts (Appx.K-54) for a full discovery of FEPC findings as: discussions, declarations, notes, reports, tapes or any other piece of evidence pertaining to Appellant's discrimination obtained during FEPC investigation, but it was refused by FEPC.

p. Inferior courts greatly erred in disregarding above cruel discrimination and letting technicalities to deprive Appellants of its constitu-

tional rights. Previous courts made an injustice and error against Appellant's civil rights by not considering the severe harassment and emotional damages that occurred during her work before April, 1977. The U.S. Court of Appeals erred also in dismissing "Motion to Reinstate the Appeal" (Appx. D) by not considering the totality of circumstances.

II. Errors of Previous Courts in Dismissing Appellant's Claim for Reinstatement in an Equivalent Job to the Previous Job.

1. As consequence of persisted, harmful discrimination, Appellant was under severe, emotional pain.

2. Despite of totally abnormal, harmful conditions at work Appellant wanted to continue to work, hoping that Appellee would erradicate discrimination. She continued through sustained physical and emotional efforts to give a good work, as affirmed during FEPC investigation, her last two months supervisor Eng. Thomas Leonard and Frasier of Personnel.

3. Appellee instead of erradicating discrimination did continue it until the Appellant became ill , being forced to medical leave on 4-22-77 by Appellee's physician Dr. Ashbury who sent her to Dr. Andri. Dr.'s Andri diagnosis was paranoia.

4. Appellant was under Dr. Andri's care at St. Francis Hospital-Psychiatry Department for a month until 5-22-1977. In the hospital Appellant started to present severe psychological reactions, she couldn't keep eyes open, she couldn't speak and had bladder infection. Such severe reactions were caused by the inproper medication administered to Appellant, based on Dr. James Brown's diagnosis. Appellant remained in Dr. Andri's care, as outpatient, until May 1978, when she changed her doctor because of unbearable psychological reactions caused by medication, with Dr. James Brown from Iowa City.

5. Around Aug. 1978, Appellant was released to go to work by several doctors: Dr. Andri Emmi, Dr.

Ward James of Peoria, Illinois, Dr. James Brown and Dr. Duffi Owen of Iowa City, Iowa, without any mental or physical restriction in work, but only with recommendation do not work in presence of the employees she felt she was harassed, sabotaged and discriminated; co-workers Hank Kapraun, Larry Clemens and Marion Calton her boss (Appx. O -11 to 15).

6. Appellant demanded to return to work through above physicians (Appx. O - 11/15).She made this demand to Connie Fraser-Personnel Department, also by presenting herself ready to work in Aug. 1978. As a result of Appellant's demands for work C. Fraser sent a letter on 11-2-1978 (Appx. U) to other Appellee's plants, inquiring for a job for Appellant. Appellant called also Mr. Grawey, R. Untz-Managers, Mr. Higgins-Personnel Chief demanding a place to work anywhere at one of Appellee's plants, but they referred her back to C. Fraser. She invariably told Appellant that can't find any job for Appellant.

7. Until 3-19-79, one month after FEPC Facts Findings Conference on 2-23-79, when FEPC asked Appellee to find for Appellant a job equivalent to her former job, Appelle never offered Appellant a job.

8. The job offered to Appellant on 3-19-79 (Appx. R) was Class II Clerk Routine, requiring Appellant to deliver computer prints to various offices, for a pay $251.20/week, lower than her previous pay $287.20/week.

9. Appellant refused Class II job (Appx. Q) as being a continuity of her discrimination because of sex and national origin, a demotion from Appellant's former job, who has a degree in chemical engineering and was employed by Appellee as Research Technician. The job offered deprived Appellant of an equivalent salary, pension, raise, promotion, social security, equivalent to her old job and was not commensurate to her education, work experience and capabilities.

Appellant's refusal is justified and can't be

considered as a quit, but a constructive dismissal of Appellant.

> "Position offered of national traveling salesman was essentially different" from Plaintiff's old job of regional supervisor, and common law principle of mitigation, therefore did not require Plaintiff to accept offer of reinstatement." Spagnuolo v. Whirlpool Corp., D.C. N.C. 1982, 548 F. Supp. 104, affirmed in part, reversed in part on other grounds 717 F.2d., 114.
>
> "In order that she was constructively discharged by defendant in violation of rights protected under this subchapter, employee doesn't have to prove it was employer to force her to resign". Schulte v. Wilson Ind., Inc., D.C. Tex. 1982, 547, F. Supp. 324.
>
> "When an employer makes an employee's work conditions so intolerable that the employee is forced into an involuntary resignation, the employer has effected a constructive discharge". Rimedio v. Revlon, Inc., D.C. Ohio 1982, 528, F. Supp. 1380.

Offering to Appellant Class II job, Appellee was only looking for a pretext to fire Appellant, and escape FEPC requirements.

10. Appellant was terminated by Appellee on March 27, 1979 (Appx. P).

11. Appellant's Qualifications:

a. Appellant has a degree in Chemical Engineering (Appx. V). Appellant took during 5 years of college courses as follows: Calculus, Physics, Resistance of Materials, Technology of Materials, Electrical Circuits, Mechanics, Industrial Technology, Electronics, Physical-Chemistry, Organic and Inorganic Chemistry, plus laboratories, Rubber and Petroleum Technology, Electrochemistry, Coal Gasification, etc.

Appellant worked as engineer in Romania, from 1955 to 1969 when she left Romania, in Tire Ind. laboratory and Refinery laboratory wwhere she worked in chemical analysis and mechanical testing of products. She was research librarian.

Coming to U.S.A. in 1970 she worked at Akron Equipment, Akron, Ohio, engraving metalic molds for tire industry with electrical tools, in accordance to the drawings. Appellant was also employed by Bandag, Inc. R & D, Muscatine, Iowa, a retreading

plant where she worked with testing machines and in chemical laboratory.

b. At the beginning of her employment, on 3-10-75 M. Calton wrote:

> "There is no question that (Appellant) is capable, hardworking, has excellent motivation, and initiative and can benefit our group. She is agressive and somewhat demanding. These qualities are of course, laudable if properly controlled. If I had only technicians working for me, (she) might well be my choice."

Also on 8-25-75 Calton wrote:

> "(Appellant) is perhaps the most devoted, hardest working technician that I have known. Her knowledge of work is impressive. In view of her progress and her excellent abilities and work output, I recommend the pay increase noted above". (Appx. O - (15,16))

Therefore when Appellant was hired by Appellee, her work experience, background were highly recognized, but when she started to claim against discrimination, M. Calton prepared false, defamatory reports about Appellant's work, to the point that Appellant was considered incapable to occupy any of the positions for which people with no college or

at most 2 years college in biology, business, with work experience in farm, food store, teaching, were hired.

Appellant was considered only for Class II Clerk "the only job she could perform without additional training for which she was qualified". Mastronardi's letter 6-26-1979 (Appx. 0-21).

c. In Fall 1984 Appellant took 3 month computer operations course at Scott Community College Davenport, Iowa (Appx. B) and a Real Estate course at St. Mary's College, Davenport, Iowa where she obtained license No. F19845 - 1982. Between 1979 to 1982 she made drawings to build four duplexes and worked as general contractor for IJP, Inc. Presently she is studying computer programming.

12. The above qualification and work experience show Appellant having technical versatility, work capability, possibility of learning in different fields due to her education and work experience. Therefore Appellee's refusal to give her a job in

a different plant, equivalent to her old job because "she has limited background to rubber testing" is false, a pretextual explanation of Appellee who hides discrimination and intention to constructively discharge Appellant. (Appx. S-3 to 5).

13. The list of 11 positions of employees hired by Appellee between Aug. 1978 to May 12, 1979, presented to FEPC (Appx. 021) and employment file of people hired, (Appx. S) show that Appellee hired people with less education and work experience than Appellant, while Appellant was asking constantly Appellee for work. Appellant could have occupied any of the above positions due to her background.

14. Appellee's testimony presented to FEPC, showed that Appellee hired less than 10% females as technicians therefore Appelle has a history in hiring males excluding females, which explains the rejection of Appellant from all jobs available. (Appx 0-2VII)

15. Appellee admitted that they have laboratories at other locations (Appx. 061) where Appellant

would not be in contact with the 3 employees mentioned at paragraph I(7) for example: General Chemistry Lab, Power Plant Lab, Gas Turbine Lab, Engine Testing Lab, also places of employment as Tire Manufacturing, Geo Department, the new Caterpillar Plant in Davenport which started to hire people only few weeks before Appellant was fired, and two months from 5-12-79 the date Appellant would end her employment by Appellee and many other plants.

At technical Center, Building E, Appellant's former place of work, there are at least 5 mechanical testing laboratories and one for general chemistry. For all of above, Appellent would have been qualified and wouldn't have been in contact with mentioned employees.

16. "Appellee refused to provide informations about vacancies"(Appx.0-61) at places of employment mentioned at paragraph 15 , pag.39.

"It is reasonable to infer, based on Appel-

> lee's size that within the 221 days (in fact 270 days between Appellant's release for work Aug. 1978, and her normal termination 5-12-79) that there were vacancies in both Research Technician and Entry Level Technician at Appellee's plants". (Appx. O-61 and 62).
>
> "Where teacher established that she belonged to protected group, applied for, was qualified for job . . . despite her qualifications, she was rejected, and after her rejection, employer filled position with persons of her qualification, teacher establishes prima facies case of sex discrimination". Coble v. Hot Spring School District No. 6, C.A. Ark. 1982, 682 F.2d, 721.

17. Appellee filled positions with people with lesser qualification than Appellant, providing them training for months and in some instances for more than a year, while Appellee refused to train Appellant not even one single day for an equivalent job to her old job.

Appellee provided training for Glen Bart for position "research compounder trainee" at Tire Development Laboratory more than a year, though the above technician didn't have any knowledge in rubber technology, compounding or testing also any college education to support the training. L.

Clemens and H. Kapraun technicians with duty to test rubber compounds, had no knowledge in testing the rubber compounds, both had only two years of college, latest in business and administration, was promoted from janitor to research technician. Also were trained: Bryant Gail for about two years to change her job from product assembler to laboratory technician C; Carmody Teala to change her job from stenographer to laboratory technician C; Berry Thomas to change job from product assembler to laboratory technician. None had any knowledge or background for the new job or education to support the training (Appx. S-3 to 5).

Monthly were sent from Pioneer Park technicians with no knowledge or background or any college education, to Tire Development Laboratory to be trained in mixing and testing rubber compounds as: Mel, Herb, Dick, Schoolman and others.

All information presented at paragr. 12 to 18 above were obtained from FEPC who gathered them from Appellee, during investigation (Appx. O).

18. Appellee admitted that in some exceptional circumstances they have required plants to accept employees from other locations -FEPC (Appx. O - 62)

Appellee found employment for M. Calton at Tire Development Lab who was a mechanical engineer at another plant. He didn't have any background or knowledge in rubber technology-compounding or testing and was practically doing no work, no supervising and wasn't capable of giving any technical advise, Calton relied entirely on Eng. Henry Guay. It is right to infer that Calton had serious problems which were greater than "personality problems" of which Appellant was accused, that he had to be transferred in a place where he couldn't work. Appellant has seen Calton two times in impossibility to talk, keep eyes open as he would have been under alcohol influence and had to leave the work. Eng. H. Guay joked that Calton received "a shot in the mouth" and had to leave the work. H. Kapraun had also "problems" which were hidden by Appellee, who

refused to give any explanation about the cause of transferring Calton and Kapraun from other plant to Tire Development Laboratory. Appelle determined M. Calton to an early retirement only after the Appellant did present so many cases of mismanagement connected to him.

In Appellee's view, the cruel, humiliating harassment and discrimination, the hospitalization and years of unbearable psychological pain was not enough "exceptional circumstances" to reinstate her in an equivalent job to her old job, in the same conditions which were offered to other employees.

It would be impossible if not dishonest to disregard statements at paragraphs I and II based on Appellee's information, statistics and testimonies received by FEPC, and still conceive that Appellee made any honest effort to eliminate discrimination and reinstate Appellant in an adequate job, or to admit that Appellee acted in its business interest,

without any discriminatory intent.

19. Appellant fully proved prima facie case of sex and origin discrimination, and pretextual offer of a job to Appellant with intention to disguise discrimination and constructive discharge Appellant.

> "In regard to civil rights cases relating to the discharge or failure to promote employee who have fought discrimination, employee must make out prima facie case of retaliation . . . employee may than show that employer' reason is merely a "pretext" covering up unlawful retaliation through the guise of innocent business planning; issue of qualifications is relevant at each of the three stages of the analysis". Williams v. Boorstin, 1980, 663 F.2d, 109, 213 U.S. App. D.C. 345, certiorari denied 102, S. Ct. 2319, 451 U.S. 985, 68 L. Ed. 2d 842.

> "Generally, an employer is liable for violation resulting from the discriminatory practices of its supervisory personnel unless the employer takes action to rectify the situation, or plaintiff fails to avail herself of the internal procedure provided by defendant corporation". Meyers v. ITT Diversified Credit Corp., D.C. Mo. 1981, 527 F. Supp. 1064.

It was never any question of Appellant infringing Appellees internal procedure in her claims

against discrimination. Same it is definitely no evidence of Appellee erradicating discrimination, but continuing it,therefore Appellee is liable for violation of Appellant's Civil Rights and Constitutional Rights.

III. Previous Courts Erred in Dismissing Apellant's Claim Without Taking in Consideration that:

1. Appellee, through his supervisor M. Calton prepared false evaluation reports of Appellant's work, in retaliation against Appellant's claim to management of discrimination, and furnished employers with these reports, preventing Appellant from finding other job. These defamatory evaluations were in contradiction to Calton's earlier excellent quotations of Appellant's work. Calton's false evaluation reports highly offensive and damaging to Appellant's work, were attached to Appellant's personnel file and were distributed to other Appellee's plants, confirming C. Fraser's testimony at FEPC(Appx 0-23;54)and her letter (Appx. U) to one of Appel-

lee's plants. Appellee's explanation that Fraser looked to other plants for employment, by circulating Appellant's file is purely pretextual, to disguise the intention to prevent Appellant from finding any other job at Appellee's plant.

Every employer's "Application for Job", even Appellee's "Application for Job" contains the question: "Reason for leaving previous employment?" Therefore each employer wants to know the circumstances in which Appellant worked and was dismissed. No employer would hire Appellant who was quoted falsely in Calton's later reports as "a sloppy worker", "lack in cooperation", "personality problems", "limited education and work experience to rubber testing", "offer of a job Clerk II which doesn't need any training, for which Appellant is qualified", "necessity to receive psychiatric help".

All the above statements are Appellee's false accusations which made impossible for Appellant to find any job equivalent to her old job, despite to

repeated job demands to more than 100 companies from Quad City area and surrounding areas such as: John Deere, Caterpillar Tractor Co., Servus Rubber Co., Alcoa, Case, Rock Island Arsenal, Oscar Meyer, Job Services - Davenport, Bendix, Blackhawk Foundry, Ralston Purina, and others.

> "Employees confronting his supervisors with charge that, for discriminatory reasons, his work was made to appear unsatisfactory, is protected opposition to an unlawful employment practice". Mack v. W. R. Grace Co., D.C. Ga. 1983, 578, F. Supp. 626.

Appellee having constructive knowledge of severe, harmful employment discrimination of Appellant, and with the knowledge of her emotional sufferances and material damages, never agreed to withdraw the false defamatory reports from her file or restrain from informing employers, but continued to harass and discriminate Appellant.

CONCLUSIONS

1. Appellee had 4 years (1975 - 1979) time to erradicate harassment and discrimination in employ-

ment of Appellant and 270 days to reinstate Appellant in a job equivalent to her former job. Appellant asked Appellee in that period to work in a different laboratory in quality control, to take computer courses, as she already did in 1980, if Appellant needed such qualificaon to be reinstated in another job, as Appellee claimed.

2. Appellee's excuses of Appellant's lack of qualification for another job, impossibility to find her a job in other Appellee's facility, existence of only 7 entry level technician positions available during 270 days in facilities of thousands of employees, refusal to provide any information about all technician entry level positions to all Appellee's plants, were dishonest, pretextual excuses, unworthy of credence, completely lacking a legitimate business reason.

3. Appellant fully proved her prima facie charge of employment illegal discrimination because of sex and national origin, severe emotional and

psychological abuse and sufferances, material damages which entitles her to relief wich should compensate her of material damages and emotional sufferances to the present.

4. Previous courts including U.S. Court of Appeals erred in dismissing Appellant's case without taking in consideration the facts and circumstantial evidence from years long employment discrimination presented in paragraph I, II and III by not according Appellant's relief as follows:

> "In employment discrimination action, district court did not abuse its discretion in ordering plaintiff's reinstatement to position equivalent to that from which he was dismissed despite contention that plaintiff's physical disability was ignored in granting such relief, where equitable relief could be provided even if not sought in pleadings and where trial court did consider facts pertaining to disability in its decision". Whalley v. Skaggs Companies, Inc., C.A. Colo. 1983, 707, F.2d, 1129, certiorari denied, 104 S. Ct. 349.

> "Damages for humiliation and emotional suffering are recoverable and such an award may be supported solely on Plaintiff's own testimony". Muldrew v. Anheuser-Busch,

Inc., D.C. Mo. 1982, 554, F. Supp. affirmed 728 F.2d 989.

Appellant emotional and physical pain are proved by her hospitalization, the treatment which followed and also the emotional pain that despite of her qualification she can't find another job.

For material damages Appellant is entitled to compensation similar to other cases accepted by federal courts as follows:

"Backpay which is designated to compensate victim of unlawful discrimination is integral part of this case". Brunetti v. Wall Mart Store Inc., D.C. Ark. 1981, 525, F. Supp. 1363.

"One purpose of an award under this subchapter is to make a person "whole" for injuries caused by illegal employment discrimination, and the award of compensatory damages for humiliation or emotional suffering in an appropriate remedy for deprivation of a constitutional right". Williams v. Trans World Airline, Inc., C.A. Mo. 1981, 660, F.2d 1267.

"Veteran Administration employee who was victim of retaliatory discharge was entitled to reinstatement, back pay, reduced by amounts earned by Plaintiff prior to returning to duty, full retroactive seniority, sick leave, vacation pay, pen-

sion, benefits and other fringe benefits in such fashion as though his employment had continued uninterrupted". Sorrels v. Veterans Adm., D.C. Ohio, 1983, 576 F. Supp. 1254.

It is right to infer that for depriving Appelland of her constitutional rights under this chapter, she is entitled to above compensation and also:

"In action against employer for violation(of rights) back pay period did not end until employees who were discriminated against, were actually offered opportunity to participate in mason apprenticeship opportunities, inasmuch as prior discrimination was not fully remedied until such time". Paterson v. Youngstown Sheet and Tube Co., C.A. Ind. 1981, 659, F.2d 736, certiorari denied 102 S. Ct. 674, rehearing denied 102 S. Ct. 1494.

"In sex discrimination, Plaintiff was entitled to an award of back pay for period that commenced 2 years before filing of charge and was also entitled to a salary taking in account what she would earned absent any discrimination, until she was no longer available for other employment reduced by some of her interim earnings". Scott v. Oce Ind., Inc., D.C. Fl. 1982, 536, F. Supp. 141.

"Backpay award received in employment discrimination case would be augmented by interest on any such award calculated from the end of each calendar quarter on the

> amount then due and owing 90% of the average prime rate for the year in which the calendar quarter occurs". Richardson v. Restaurant Marketing Associates, Inc., D.C. Cal. 1981, 527 F. Supp. 690.

Appellant successfully proved her case of employment discrimination therefore:

> "Although court has discretion in determining what remedies are appropriate in particulory sex discrimination cases when Plaintiff has prevailed, there is not discretion to deny injunctive relief completely and very little discretion in awarding backpay". Grove v. Frostburg Nat. Bank, D.C. Md. 1982, 549, F. Supp. 922.

Appellant points out that she never had psychiatric treatment before medical leave on April 19, 1977. FEPC has been misinformed through investigation (Appx. O-40), about continuation of a treatment

In view of evidence presented by Appellant and the above rulings, Appellant asks justice and relief under Title VII Civil Rights Act, 42 U.S.C.A. Sec. 2000e et seq. as follows:

a. Backpay from the day she had her last merit increase Aug. 1975 to the present time, deducting

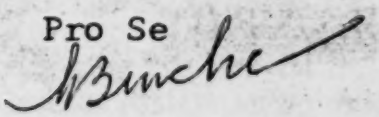
her earnings, payment of her merit increase, promotion, rate of inflation increase, pension, social security, interest and other fringe benefits up to date as she would not have been on medical leave and fired.

b. Compensation for irreparable emotional damages during six years of suffering, caused by discrimination and lack of job in amount of $800,000.00.

Maura Burche

Appellee

Pro Se



CERTIFICATE OF SERVICE

I, Maura Burche, Appellant Pro Se, hereby certifys that two copies of the foregoing Appeal in the U.S. Supreme Court were duly served, this day of September, 12, 1985, by insured mail, United States Mail, postage prepaid, upon Appellee's attorney: Thomas G. Harvei at the address: 1400 First National Bldg., Peoria, Ill. 61602.

Maura Burche MBurche

Appellant Pro Se

5210 Division St.
Davenport, IA.52806
Ph. (319)-386-4736

Note: Two revised copies made in accordance with Supreme Court's request were mailed to Appelee on Oct.1st,1985, to the above address.

SUPREME COURT OF THE UNITED STATES

No. A-70

MAURA BURCHE,

Applicant,

v.

CATERPILLAR TRACTOR CO.

ORDER

UPON CONSIDERATION of the application of petitioner,

IT IS ORDERED that the time for filing a petition for writ of certiorari and/or for docketing an appeal in the above-entitled cause be, and the same is hereby, extended to and including September 22, 1985.

/s/ John Paul Stevens

Associate Justice of the Supreme Court of the United States

Dated this 25th day of July, 1985.

B-1

ACADEMIC RECORD

EASTERN IOWA COMMUNITY COLLEGE DISTRICT
2804 EASTERN AVENUE
DAVENPORT, IOWA 52803

SCOTT COMMUNITY COLLEGE
BELMONT ROAD
BETTENDORF, IOWA 52722

BURCHE, MAURA
5210 DIVISION
DAVENPORT, IA 52806

SEMESTER/ COMPUTER3	COURSE/TITLE	CATALOG NUMBER	SEMESTER HOURS	GRADE
FALL 84	MAJOR-GENERAL STUDIES			
14300	COMPUTER FUNDAMENTALS	BCP 100	4.00	B
	TOTALS FOR SEMESTER GPA	3.000	4.00	
SPRING 85	MAJOR-GENERAL STUDIES			
14946	COBOL I	BCP 130	4.00	W
	TOTALS FOR SEMESTER GPA	0.000	0.00	

ALL COURSES TAKEN AT SCOTT COMMUNITY COLLEGE

ACADEMIC RECORD SUMMARY

SEMESTER HOURS	ATTEMPTED	EARNED	GRADE PTS.	GPA
EXAMINATION		0.00	0.00	0.000
TRANSFER	0.00	0.00	0.00	0.000
EICCD	4.00	4.00	12.00	3.000
TOTALS	4.00	4.00	12.00	3.000
CURRENT MAJOR	4.00	4.00	12.00	3.000

C-1

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

CHICAGO, ILLINOIS 60604

May 22, 1985.

Before

Hon. Harlington Wood, Jr., Circuit Judge

Hon. _____

Hon. _____

MAURA BURCHE, Plaintiff-Appellant, NO. 84-1807 VS. CATERPILLAR TRACTOR CO., Defendant-Appellee.	Appeal from the United States District Court for the Central District of Illinois, Peoria Division. No. 81 C 1130 Judge Robert D. Morgan

On consideration of the "MOTION TO REINSTATE THE APPEAL" filed herein on May 16, 1985, by pro se plaintiff-appellant,

IT IS ORDERED that said motion is DENIED.

D-1

UNITED STATES COURT OF APPEALS FOR

THE SEVENTH CIRCUIT, CHICAGO, ILLINOIS

Maura Burche - Plaintiff - Appellant

vs. Case No. 84-1807
Judge Morgan

Caterpillar Tractor Co. - Defendant-Appellee

MOTION TO REINSTATE THE APPEAL

Comes now the Plaintiff-Appellant, Maura Burche and hereby files a Motion to Reinstate the Appeal based on the following reasons:

1. Plaintiff has been misrepresented by her attorney Paul S. Kuster, by not filling on time the brief requested by Seventh Circuit Court of Appeal.

2. An attorney's Retainer Agreement has been entered on May 31, 1983 between Plaintiff and attorney Paul S. Kuster to represent the Plaintiff for this law suit (Addendum No. 1). Attorney Paul S. Kuster did not fulfill his obligations to file on time a brief and did not informed the Plaintiff that the Appeal has been denied for lack of

prosecution. Plaintiff found out about such decision not from her attorney but from the Seventh Circuit Court of Appeal, on May 10, 1985, through a telephone call made by Plaintiff.

3. Plaintiff has been misrepresented by her attorney and was deprieved of her legal right to get a judgement of her case. Due to this misrepresentation, the court denied the case depriving the Plaintiff of the posibility of recuperate damages claimed in her law suit. Therefore Plaintiff from now on is dismissing her attorney and will be represented pro-se.

Plaintiff prays the Court to reinstate the Appeal and get another date to file a brief as requested by law.

Pro se

Maura Burche

E-1

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

CHICAGO, ILLINOIS 60604
November 27, 1984.

A True Copy:
Teste:
A. Strong, Deputy
Clerk of the United States Court
of Appeals for the Seventh Circuit.

HON. Walter J. Cummings, Chief Judge
HON. William J. Bauer, Circuit Judge
HON. Harlington Wood, Jr., Circuit Judge

MAURA BURCHE,
Plaintiff-Appellant,

No. 84-1807 vs.

CATERPILLAR TRACTOR CO.,
Defendant-Appellee.

Appeal from the United States District Court for the Central District of Illinois, Peoria Division.
No. 81 C 1130
Judge Robert D. Morgan

This court issued a Rule to Show Cause to retained counsel for appellant on November 15, 1984.

No response has been filed. On consideration thereof,

IT IS ORDERED that this appeal is hereby DISMISSED for lack of prosecution pursuant to Circuit Rule 8(b)(1).

F-1

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF ILLINOIS

PEORIA DIVISION

MAURA BURCHE, Plaintiff-Appellant.

No. 81-1130

vs.

Judge Morgan

CATERPILLAR TRACTOR CO., Defendant-Appelee.

NOTICE OF APPEAL

Comes now the Plaintiff-Appellant, MAURA BURCHE, and hereby files her Notice of Appeal as follows:

1. This Appeal is taken from the ruling of the Honorable Robert D. Morgan on the 12th of April, 1984, entering a directed verdict in favor of Defedant-Appellant, CATERPILLAR TRACTOR CO., at the conclusion of Plaintiff-Appellee's evidence in the above-captioned matter.

2. The Clerk is hereby requested to prepare the Record on Appeal as required.

F-2

MAURA BURCHE

By: Paul S. Kuster
Her Attorney

Paul S. Kuster
1808 Savings Center Tower
Peoria, Illinois 61602
Telephone: (309)673-0168

Filed and delivered to CTC on 5-12-84

G-1

JUDGMENT IN A CIVIL CASE

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF ILLINOIS

MAURA BURCHE

Docket No. 81-1130

vs.

Judge Robert D. Morgan

LARRY CLEMENS, HANK V. KAPRAUN, MARION CALTON & CATERPILLAR TRACTOR COMPANY.

____Jury Verdict. This action came before the Court and a jury with the judicial officer named above presiding. The issues have been tried and the jury has rendered its verdict.

__X__Decision by Court. This action came to trial before the Court with the judge (magistrate) named above presiding. The issues have been tried and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

that a directed verdict is hereby entered in favor of Defendants, and againgst Plaintiff, Maura Burche. Costs and attorney's fees to Defendants are denied. -

Filed April 12, 1984

Robert J. Kauffman, Clerk
U.S. District Court
Central District of Illinois

Clerk
Robert J. Kauffman

(By) Deputy Clerk
Leonard D. Brown

H-1

ATTORNEY'S RETAINER AGREEMENT

This Agreement made and entered between John and Maura Burche designated as "Clients" and Paul S. Kuster designated as Attorney at Law.

Clients retain Paul S. Kuster to represent Maura Burche's claim against Caterpillar Tractor Co., Calton et al., based on the fact that the United States Court of Appeals reversed the District Court's dismissal of Plaintiff's Title VII claims and the case has been remanded to the District Court for consideration.

Attorney accepts said employment and agrees to take such steps to enforce clients' interest by using the following steps:

-Arrangement of a settlement with Clients' agreement regarding conditions.

-Trial

-Appeal if the District Court decision did not consider the Plaintiff's minimum loss.

Clients agree to pay a cash retainer of

$1000.00 which will be paid in two installments. First installment of $500.00 will be paid at the signature of the Agreement and $500.00 if the case has not been settled and it is decided to go to trial. If the matter is concluded without trial on a settlement accepted by Clients, the Attorney's fee is ten percent (10%) of the recovery with credit being given for the retainer paid in advance.

If the case would proceed to trial, or the Clients would consider necessary to appeal, the Attorney fee, if Clients successful, would be set by the Court and paid by the adverse party with credit being given to Plaintiff for the one thousand dollars ($1000.00) retainer.

If through trial and appeal Clients are not successful, the Attorney's fee is limited to the retainer paid in advance of one thousand dollars ($1000.00), plus expenses incurred in the trial of case. Such expenses should be limited to meet

legal procedures only.

If Attorney desires to withdraw from the case before finalization, he should reimburse the retainer. Any fee from a potential recovery will be lost and the entire file of case should be given to Clients.

If Clients substitute the Attorney for very justified reasons prior to finalization of case, they will lose the retainer and will obtain immediately the entire file from the Attorney in order to continue the lawsuit.

CLIENTS:

MAURA BURCHE

JOHN BURCHE

ATTORNEY:

PAUL S. KUSTER

May 31, 1983

I-1

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

CHICAGO, ILLINOIS 60604

(SUBMITTED APRIL 20, 1983)*

MAY 16, 1983

UNPUBLISHED ORDER NOT TO BE CITED PER

CIRCUIT RULE 35

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* After preliminary examination of the briefs, the court notified the parties that it had tentatively concluded that oral argument would not be helpful to the court in this case. The notice provided that any party might file a "Statement as to Need for Oral Argument." See Rule 34(a), Fed. R. App. P. (effective Aug. 1, 1979). Circuit Rule 14(f). The plaintiff filed a statement requesting oral argument. We conclude that oral argument will not aid the court in deciding the case. Accordingly, the case has been submitted on the briefs and record.

I-2

Before

HON. WILBUR F. PELL, JR., CIRCUIT JUDGE

HON. RICHARD D. CUDAHY, CIRCUIT JUDGE

HON. JOHN L. COFFEY, CIRCUIT JUDGE

MAURA BURCHE, Plaintiff-Appellant,	Appeal from the United States District Court for the Central District of Illinois,
No. 81-2580 vs.	Peoria Division.
LARRY CLEMENS, et al., Defendants-Appellees.	No. 81 C 1130 Robert D. Morgan,

Judge.

ORDER

Pro se plaintiff Maura Burche appeals the district court's dismissal of her Title VII suit against Caterpillar Tractor Company, plaintiff's former employer, Larry Clemens and Hank Kapraun, plaintiff's former co-workers; and Marion Calton, plaintiff's former supervisor. For the reasons which follow, we reverse the district court's dismissal of plaintiff's Title VII claims and affirm the district court's dismissal of

plaintiff's other claims.

I

Maura Burche was employed by Caterpillar Tractor Company as a laboratory technician at the Tire Development Laboratory in Mossville, Illinois. Plaintiff holds a Masters Degree in Chemical Engineering. She was hired in the spring of 1975 and worked at the plant until April, 1977, when she was placed on medical leave. At the time she went on medical leave she was earning $287.20 per week. Plaintiff claims that she was forced to take a leave because defendants Kapraun and Clemens continually harrassed her on the basis of her sex and Romanian national origin. Burche claims that this harassement took place because, despite her complaints, defendant Calton refused to take any action to prevent such abuse.

Plaintiff was on a medical leave of absence from April, 1977 due to a nervous illness. In August, 1978, Burche notified Caterpillar that she

was able to return to work. Her psychiatrist wrote a letter informing Caterpillar of plaintiff's ability to return to work. Her doctor recommended that she work, but indicated that she should not return to work with defendants Kapraun, Clemens or Calton. Caterpillar did not offer Burche a job until March 19, 1979. The job offered by the employer was a Class II Clerk Routine position which would require the plaintiff to deliver computer printouts to various offices. The offered position paid $251.20 per week. Plaintiff refused to accept this job because it was not a suitable position similar to the one she left and was beneath her capabilities and qualifications. At that time, Caterpillar claimed that the job that it offered was commensurate with plaintiff's abilities due to her mental condition. The company terminated Burche on March 26, 1979 for refusing to accept the job.1/

1/ On November 11, 1978, prior to her termination, Burche filed a charge with the Illinois Fair Employment Practices Commission alleging that she had been a victim of discrimination because of her sex and her Romanian national origin. Burche also filed with the Equal Opportunties Employment Commission which deferred consideration of her case pending state agency adjudication. Burche amended the charge in May, 1979, after her termination, alleging discrimination based on a mental handicap. Burche claimed that Caterpillar refused to accomodate her handicap. The Fair Employment Practices Commission did not consider Burche's claim that she had been harassed on the job in 1977 based on her sex and national origin because the charge was filed after the 180-day time limit for filing. The Commission entered a finding of Substantial Evidence on October 17, 1979. In February, 1981, an Administrative Law Judge found for the defendants after a hearing had been on

December 16, 1980.

_____ (End of Footnote)

On April 16, 1979, Burche filed a four-count civil complaint in the Circuit Court, Tenth Judicial District of Illinois, against Kapraun, Clemens, Calton and Caterpillar. Count I was a claim against Kapraun and Clemens for intentional infliction of emotional distress; Count II presented a claim against Calton for willfully allowing the behavior in Count I to occur; Count III alleged a claim against Caterpillar Tractor Company for negligently hiring the other defendants or because Caterpillar was responsible for the other defendants' actions; Count IV alleged that Caterpillar engage in unlawful employment discrimination in violation of the Illinois Constitution. The Circuit Court dismissed Counts I-III because the applicable two year statute of limitations had run. The court did not consider plaintiff's fourth count because that claim was

still pending at the Fair Employment Practices Commission, whose deteination was subject to review by the court. Plaintiff appealed the dismissal to the Illinois Appellate Court, Third District, which affirmed the dismissal.

In May, 1981, Burche received a "Right to Sue" letter from the Equal Employment Opportunity commission notifying her that she could file suit within ninety days. Burche instituted the present suit on August 3, 1981. In her complaint, in the first of three counts, Burche alleged that defendants Clemens and Kapraun were guilty of intentional infliction of emotional distress because of their harassment of her based on her sex and national origin. In Count II, Burche claims that Calton was liable to her for intentional infliction of emotional distress for allowing the harassement to continue, and for actually harassing her. In Count III plaintiff alleged that defendant Caterpillar was liable for the harassment by

Kapraun, Clemens and Calton. Also, plaintiff alleged that defendant Caterpillar refused to rehire her to an appropriate position upon the termination of her illness because she was handicapped. The company allegedly claimed she was handicapped to cover up the discrimination based on sex and national origin. Plaintiff alleged that she was qualified for any rubber or mechanical laboratory technician job at Caterpillar, and that the defendant hired people less qualified than Burche to fill those positions. Also, plaintiff alleged that Caterpillar gave other employers false recommendations preluding her from getting other jobs in the area.

The defendants moved to dismiss plaintiff's claim of intentional infliction of emotional harm against Clemens, Kapraun and Calton because of the doctrine of res judicata with respect to that claim. Defendants argued that plaintiff raised the same claim in state court and it was dismissed with

prejudice thereby barring the reinstitution of the same claim in another court. Defendants stated that as for any claim under 42 U.S.C. 2000e, et seq., the defendants Kapraun, Clemens and Calton were not employers under the Act and therefore are not liable under Title VII as a matter of law. Also, defendant Calton moved to dismiss the claim for lack of personal jurisdiction and because he was not properly served at his residence in Missouri. The defendants also moved to dismiss Burche's Title VII claims arising from any unlawful employment practice occurring before March 14, 1978, arguing that the EEOC's jurisdiction is limited to the investigation of charges arising within three hundred days of the filing date. In addition, defendants moved to dismiss the complaint insofar as it alleged that Caterpillar discriminated against Burche on the basis of a mental handicap. 42 U.S.C. 2000e et seq. does not protect employees from discrimination on the basis

of a handicap. Therefore, defendants argued, plaintiff did not state a claim for which relief could be granted. Defendants moved to strike plaintiff's complaint for violation of Rules 8(e) and 11 of the Federal Rules of Civil Procedure because the claim was not short and concise and because it contained scandalous matter. Defendants moved to dismiss the complaint for failure to allege facts necessary to give the district court jurisdiction. Finally, defendants requested that the district court award them attorneys' fees and costs.

The distirct court issued an order of judgment in favor of defendants "pursuant to all the grounds asserted in Defendants' responses;" . . . and the case was dismissed with prejudice. The record is unclear as to whether the district court acted upon defendants' request for attorneys' fees and costs. The plaintiff filed a timely notice of appeal.

II

The question presented for review is whether the district court properly dismissed plaintiff's claims on the pleadings. It is difficult to determine exactly why the district court dismissed her complaint because the district court did so in a one line statement granting defendants' motion to dismiss for the reasons stated in their motion. We must examine all grounds set forth in defendants' motion to dismiss to determine if the motion properly was granted. We will consider plaintiff's non-Title VII claims and then review her Title VII claims separately below.

A. Non-Title VII Claims

Defendants moved to dismiss the claims raised in the complaint other than raised under Title VII, 42 U.S.C. 2000e, et seq., because they were barred by the doctrine of res judicata. For a determination of res judicata, a court must find three essential elements: (1) a final judgment on

the merits in an earlier action; (2) an identity of the cause of action in both the earlier and later suit; and (3) an identity of parties or their privies in the two suits. Lee v. City of Peoria, 685 F.2d 196 (7th Cir. 1982). All three elements are present in this case. Plaintiff made almost the identical claims of intentional infliction of emotional distress in her state court suit as she did in the instant suit. The parties to the state suit are identical to the ones named in the federal suit: Kapraun, Clemens, Calton and Caterpillar. Although the prior action was not decided on the actual "merits" of Burche's claim because the state court determined that the statute of limitations had run, that state court judgment is res judicata as that issue was actually decided by the court. The federal court is bound by the state court determination that the statute of limitations had run. 1B Moore's Federal Practice 0.409[6] n. 8. See Angel v. Bullington, 330 U.S. 183 (1947). The district court properly dismissed plaintiff's

claims of intentional infliction of emotional distress because they were barred by the doctrine of res judicata.

The only claim that plaintiff had against both defendants Kapraun and Clemens was one for intentional infliction of emotional distress. As discussed above, the statute of limitations has run and, therefore, the complaint was properly dismissed against these two defendants.

B. Title VII Claims

Defendants raise several objections to plaintiff's claims arising under Title VII, 42 U.S.C. 2000e, et seq. Defendants object to the inclusion of defendant Calton because he is not an "employer" as defined under Title VII. Defendants raise other objections to plaintiff's complaint, claiming that plaintiff failed to plead a basis for federal jurisdiction, failed to raise pre-1978 violations in a timely manner, and failed to state a claim for which relief can be granted. We hold,

for reasons stated below, that plaintiff has stated claims for which relief could be granted. Plaintiff essentially states two cognizable claims of discrimination: that defendants refused to rehire her and that defendants disseminated false reports and recommendations to her potential employers. We will discuss defendants' objections in light of these two cognizable claims.

Defendants moved to dismiss the complaint against defendant Calton because he is not an "employer" as defined in 42 U.S.C. 2000e-1. From the record before us, it is unclear whether Calton is an "employer" within the meaning of Title VII. Calton may have had some control over Caterpillar's decision not to rehire Burche to a similar position. In addition, according to Burche, Calton is responsible for writing false reports and giving them to other potential employers for discriminatory reasons. Either of these actions may make Calton liable as an "employer" under Title

VII. We note, however, that Calton now resides in Missouri and his attorney claims that he was not personally served. This may be a reason to dismiss the complaint against him. The record lacks sufficient information to make a proper determination of why the district court dismissed plaintiff's claim against Calton. Upon remand, if the district court finds the attorney's representations to be true with respect to service on defendant Calton, the claim against Calton must be dismissed. If, however, Calton was served properly, the district court should determine whether Calton was an "employer" under Title VII.

The defendants moved to dismiss the plaintiff's complaint for failure to set forth a basis of jurisdiction. In her complaint, Burche did not assert a jurisdictional basis for the action in federal court. A plaintiff, especially one proceeding pro se, is not required to cite a statutory basis for jurisdiction if the facts

alleged provide the basis for the court's assumption of jurisdiction. Rohler v. TRW, Inc., 576 F.2d 1260 (7th Cir. 1978). Plaintiff has alleged facts which raise issues of discrimination in failing to rehire her and unlawful employment practices for giving false recommendations for discriminatory reasons. The court clearly has jurisdiction over claims arising under Title VII, which prohibits such practices. Plaintiff's claims fall within Title VII, and therefore the district court had jurisdiction and could not properly grant a motion to dismiss because plaintiff failed to provide a statutory basis for jurisdiction.

Defendants, in their motion to dismiss, argued that any claim by Burche alleging unlawful employment discrimination prior to approximately March 1978 could not have been appropriately before the EEOC and was not properly before the court. In her complaint, Burche alleges instances of employment discrimination that occurred at two

separate times: prior to her medical leave which commended April, 1977 and after she notified the Company that she was ready to return to work in August, 1978.

A charge of employment discrimination must be timely filed in order to be considered by the EEOC and to establish federal court jurisdiction. Burche's allegation of discrimination based on the employer's actions before April of 1977 before she took her leave of absence, would not be cognizable in federal court because the actions occurred more than three hundred days prior to Burche's filing with the EEOC. Although the federal court could not grant relief for any pre-leave of absence discrimination which took place prior to April, 1977, it properly might consider any actions which took place as evidence of later discrimination. United Airlines Inc. v. Evans, 431 U.S. 553 (1977); Fisher v. Procter & Gamble Manufacturing Company, 613 F.2d 527 (5th Cir. 1980). The question of

admissibility and relevance of prior acts is left to the sound discretion of the trial court.

In their motion to dismiss, defendants characterized plaintiff's timely filed claim as one for discrimination on the basis of mental handicap. Title VII does not protect employees from discrimination on the basis of mental handicap; therefore, defendants argued, plaintiff's complaint must be dismissed for failure to state a claim for which relief could be granted. The district court apparently granted the motion to dismiss for this reason.

Initially, we note that plaintiff is proceeding pro se. Her complaim must be construed liberally. A pro se complaint is held to a less stringent standard than a complaint drafted by a lawyer. See, e.g., McDonald v. Hall, 610 F.2d 16 (1st Cir. 1979); Sisbarro v. Warden Massachusetts State Penitentiary, 592 F.2d 1 (1st Cir.), cert. denied, 444 U.S. 849 (1979). Judging plaintiff's complaint

by a less stringent standard, we find that she has successfully pleaded a Title VII claim. Although she has not pleaded it articulately or in the most straight forward manner, she has pleaded a claim and the district court should not have granted defendants' motion to dismiss.

In order to plead a Title VII case successfully, a plaintiff must allege the following: (1) that she belongs to a class protected by Title VII; (2) that she applied and was qualified for a job for which the employer was seeking applicants, (3) that, despite her qualifications, she was rejected; and (4) that, after her rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications. McDonnell Douglass Corporation v. Green, 411 U.S. 792 (1973). Plaintiff has alleged this with respect to her claim of unlawful refusal to hire from August, 1978 through March, 1979.

In her complaint plaintiff states that she is female and that her national origin is Romanian. Plaintiff is protected under Title VII for discrimination on the basis of either her sex or her national origin. In paragraph 53 of Count III plaintiff alleges that she was qualified for any number of jobs at Caterpillar. She states her degree and job experience and alleges that she was capable of working at any mechnaical or rubber laboratory or plant at Caterpillar. Plaintiff states that she has a degree in chemical engineering. She has taken courses in electrochemistry, general technology and electricity. She has worked for twenty-five years in the rubber and oil industries and in the mechanical industry - tire engraving. Although plaintiff was not specifically rejected from any particular lab technician jobs, Caterpillar refused to consider her for any of those jobs and offered her a clerical job for which plaintiff alleges she

was overqualified. In addition, plaintiff alleges that from August, 1978, when she notified the company that she was available to work in any setting, except where the other defendants were working, the company hired people who were less qualified than she was and trained them for their jobs (Complaint, Count III, Paragraph 55). Judging her complaint by a less stringent standard, we conclude that plaintiff has succeeded in pleading a Title VII claim.2/

2/ Defendants' motion to dismiss presented matters outside the pleading. Under Rule 12 of Federal Rules of Civil Procedure this might be treated as a motion for summary judgment under Rule 56. Defendants' motion did not present matters outside the pleading with respect to plaintiff's timely filed Title VII claim; therefore, the motion to dismiss that claim could not have been treated as a

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Plaintiff also has alleged that defendant Calton prepared false evaluations about her work which prevented her from obtaining a job elsewhere (Complaint, Count II, Paragraphs 24, 38). In addition, plaintiff alleged that the defendant Caterpillar has discriminated against her by furnishing other potential employers with Calton's

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2/ Continued

motion for summary judgment. In any event, assuming arguendo that it was treated as a motion for summary judgment, plaintiff was not given notice of the consequences of failing to respond with affidavits to the motion for summary judgment. If the court had treated defendants' motion as one for summary judgment, the judgment would have to be vacated. See Lewis v. Faulkner, 689 F.2d 100 (7th Cir. 1982). For these reasons, we will treat defendants' motion only as a motion to dismiss and not as one for summary judgment.

reports which wre "unjust" and untrue (Complaint, Count III, Paragraphs 49, 58). This states a claim for relief under Title VII, if the employer gave damaging referrals for discriminatory reasons. Shehadeh v. Chesapeake and Potomic Telephone Co. of Maryland, 595 F.2d 711 (D.C. Cir. 1978).

Plaintiff has stated a sufficient claim even though she has neither pleaded specific available positions for which she was not hired, nor cited specific instances of improper recommendations made by defendant to other potential employers. Pleadings should be specific enough to give the employer sufficient notice of the alleged discrimination to formulate an answer. Any more information necessary to defend the claim may be determined through discovery. Steadman v. Hundley, 421 F. Supp. 53 (N.D.Ill. 1976); Reyes v. Missouri-Kansas-Texas R. Co., 53 F.R.D. 293 (D.C. Kansas 1971). Plaintiff has pleaded sufficient facts to give the employer adequate notice. Caterpillar is

well aware of the incident to which plaintiff refers. Caterpillar may have a different version of its refusal to call plaintiff back to a similar position; however, that version is left for proof at trial.3/ Caterpillar has enough notice of plaintiff's claim to formulate a response, especially with regard to the refusal to recall her. As to her claim for that Caterpillar provided other potential employers with false reports, the district court might order her to plead that claim more specifically by stating the names of the employers and who gave the recommendations for Caterpillar.

The district court erred in dismissing plaintiff's complaint. We hold that plaintiff sufficiently pleaded a claim under Title VII

3/ Upon remand, the district court may find that this case is appropriate for disposition on a summary judgment motion.

against the two remaining defendants, Caterpillar and Calton. The complaint should not have been dismissed because we cannot say that "it appears that plaintiff can prove no set of facts in support of (her) claim which would entitle (her) to relief." Conley v. Gibson, 355 U.S. 41, 45-6 (1957). See also Davis v. Weidner, 421 F. Supp. 594 (E.D. Wisconsin 1976).4/

4/ Plaintiff has alleged a prima facie case in her pleadings. A prima facie case raises the inference that the reasons for the employer's actions were based on impermissible considerations. Furnco Construction Co. v. Waters, 438 U.S. 567 (1978). Therefore, this case cannot be dismissed at the pleadings stage, but must proceed to the proof stage where the employer must give a legitimate, non-discriminatory reason for its decision not to hire Burche in a technician position. A non-

(footnote continued on next page)

Defendants moved to dismiss plaintiff's complaint for failure to comply with Federal Rules of Civil Procedure 8(e) because her pleadings are not concise. Although plaintiff's complaint is confused and somewhat unclear, this does not warrant a dismissal of the complaint. Dismissals for failure to comply with Rule 8(e) are not favored. Tarkowski v. Robert Bartlett Realty Co., 644 F.2d 1204 (7th Cir. 1980). The better practice would be to allow plaintiff to amend the complaint and replead her claim more specifically in order to comply with Rule 8(e). Saad v. Burns International Security Services, 456 F. Supp. 33 (D.D.C. 1978); Marshall v. Electric Hose and Rubber Co., 65 F.R.D. 599 (D. Del. 1974); Van Hoomissen v. Xerox Corp.,

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4/ Continued

discriminatory reason for refusing to hire Burche to her former position may be given at the summary judgment stage. See note 3, supra.

368 F. Supp. 829 (N.D. Cal. 1973). If the district court dismissed the case because the plaintiff's failure to comply with Rule 8(e), this was error. The district court should have ordered the plaintiff to replead with more specificity.

Defendants have asked us to affirm the district court's award of attorneys' fees and costs. Upon a review of the district court's docket sheet and the record on appeal, we see no award of attorneys' fees and costs. The district court allowed the defendants' motions to dismiss, but neither the judgment, nor any other document in the record contains any mention of any award of attorneys' fees. However, in light of our decision today that plaintiff successfully pleaded a Title VII claim, defendants are no longer a "prevailing party" and therefore would not be entitled to attorneys fees under 42 U.S.C. 2000e-5(k). Defendants also asked for costs and attorneys' fees on appeal. In light of the outcome of this case, that request is

denied.

For the foregoing reasons, the district court judgment in favor of the defendants on plaintiff's Title VII claims is reversed. The case is remanded to the district court for consideration on the merits. The district court's dismissal of plaintiff's other claims is affirmed.

J-1

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

IN THE MATTER OF:

MAURA BURCHE,

Complainant,

and

CHARGE NO. 1979SF-0220
ALS FILE NO. 357(L)

CATERPILLAR TRACTOR COMPANY,

Respondent.

RECOMMENDED ORDER AND DECISION

This matter is before me for recommended order and decision upon a Complaint issued October 23, 1979. That Complaint alleged, inter alia:

1. That Burche had been hired as a Research Technician at Caterpillar's Technician Center;
2. That she worked there until going on medical leave for psychiatric care on April 22, 1977;

3. That on several occasions between August, 1978, and March, 1979, several psychiatrists who had evaluated her at her own or respondent's request, released her to work;

4. That her medical release restricted her to positions in which she would not have to work with any or all of three specific co-workers one of whom was her supervisor;

5. That there were vacancies for which Burche was qualified which did not require working with these three individuals.

At public hearing on December 16, 1980, at the close of complainant's case, respondent moved for a directed verdict on the ground that complainant (1) had not shown herself to be a handicapped individual within the meaning of the Fair Employment Practices Act ("FEPA") and (2) had presented no evidence in support of the paragraph numbered five above.

I declined to rule upon the first part of respondent's motion at that time because I had not yet had an opportunity to read the medical documents which had been introduced by complainant. 1/ With regard to the second point, however, I asked complainant to point out the supporting evidence and/or show me how she could maintain her cause of action in the absence of such evidence.

In response complainant contended that:

(1) considering the size of respondent, the Act "clearly" does not intend that a complainant seeking such accommodation bear the burden of proving that there

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1/ It now appears that respondent's argument, that it could not have perceived her as mentally handicapped because it would have not sought an alternative position for her if it had, is, as a legal proposition, not in accord with the law of Illinois. See Chambers v. FEPC, 96 Ill.App.3d 884, 422 N.E.2d 130 (1st Dist. 1981) (the Commission may not assume that a person who is mentally ill, is of necessity, unable to perform his work duties).

was a specific job that complainant was trained to perform, but that was not offered to her; and

(2) it is illogical to assume that a company the size of respondent does not operate laboratory facilities wherein complainant could have been employed without coming into contact with the three individuals mentioned in the physician's reports, and that dismissal is too harsh a sanction for failure to produce such proof when respondent had not fully complied with Complainant's subpoena duces tecum.

Complainant did not then and does not now point to any evidence of record which supports this allegation.2/ Nor did or does complainant

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2/ Complainant herself asserts in her pro se motion for reconsiderations, that she could have

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contend that this paragraph of her complaint is mere surplusage. I therefore held and now reaffirm my conviction that a directed verdict should be entered dismissing this Complaint.

FINDINGS OF FACT

Based upon the parties' stipulations and a preponderance of the evidence of record, I hereby make the following findings of fact:

1. Complainant earned a college degree in chemical engineering from Bucharest Polytechnical Institute in Roumania in 1955; taking various courses in chemistry, math, plastics, rubber,

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2/ Continued

been offered a job in respondent's mechanical department, as was one Bobby James. Complainant should have relayed this information to her attorney prior to hearing so that it could have been presented at hearing and respondent could have had an opportunity to respond to it.

electronics, mechanics, electricity, technology, and the coal industry; and specializing in coal gasification.

2. She was employed as a chemical engineer in Roumania until 1969. In 1970 she entered the United States and became employed in the rubber industry. After 1971 she was hired as a rubber technician at the Bandag Corporation and in 1975 she was hired by respondent to do similar work as a rubber technician at respondent's Tire Development Division in Building E at respondent's Mossville Technical Center.

3. Building E was respondent's applied sciences lab for the Peoria area. Respondent housed certain types of complex indoor testing equipment only in that building and applied scientists from many divisions of respondent, including employees from both the Technical Center and the Pioneer Park facilities who conducted chemical experiments, were housed in Building E

specifically to share this equipment.

4. Complainant performed work testing various rubber compounds. In performing this work complainant had to utilize many testing devices and pieces of equipment. These machines and testing devices were scattered throughout various locations on both floors of Building E. Numerous other employees of respondent from the Tire Development Division and the other divisions also utilized this equipment and/or the laboratories or rooms in Building E in which such equipment was/is kept.

5. Respondent's Tire Development Division was supervised by Marion Calton at Building E. Calton and other Division employees also spent an unspecified amount of time conducting tests at respondent's proving grounds. No other evidence was introduced to establish where in respondent's Peoria facilities Calton and the other two employees in question did or did not do their work.

6. In April, 1977, complainant was hospitalized under the care of Dr. Emmy Andri, M.D., who diagnosed complainant as evidencing a paranoid state.

7. From April, 1977, to March, 1979, complainant was on medical leave of absence from respondent, which status provided that complainant would receive disability payments during the period of her medical leave.

8. That during the period she was on medical leave, complainant was seen and/or treated and/or evaluated by several different psychiatrists and psychologists.

9. In March, 1979 when complainant's medical benefits were about to run out, it was detemrined that complainant could return to work, but not in or around the presence of Calton or two particular former co-workers.

10. Respondent's personnel services supervisor Fraser attempted to find an alternative position

for complainant which would utilize her knowledge and skills without causing her to work around these three people. Both complainant and respondent believed this restriction to preclude complainant from any job in Building E or in the Tire Development Division.

11. At complainant's request, Fraser contacted respondent's Davenport, Iowa facility and asked if there were any positions available for a person of complainant's education and experience. Fraser was told there were not.

12. Frazer contacted respondent's Mossville production facility and was told that the technical jobs there for which complainant qualified were filled by hourly employees on a seniority basis. Fraser did not ask if there were appropriate vacancies with the appropriate qualifications as to which that facility was hiring applicants with no seniority.

13. Neither Frazer nor anyone else in personnel at the Technical Center facility was

empowered to hire employees for any facility other than the Technical Center.

14. On or about March 19, 1979, complainant was offered a position at respondent as a Class II Clerk Routine which carried a lower salary and used none of her technical skills and experience, but which would insure that Burche would not be working with or around the three individuals mentioned above.

15. Complainant refused the position as Class II Clerk Routine and, in accordance with respondent's policy, complainant was separated from employment effective March 26, 1979 as a voluntary quit.

16. Between October 23, 1978 and March 22, 1979 several employees graded Class 9 Technician B and Class 8 Technician C were hired by respondent for salaried positions in the Peoria area outside of Building E and the Tire Development Division. All of these positions required skills, such as

statistical analysis or computer programming ability, not possessed by complainant. Some also required work at the proving grounds and might have involved some contact with complainant's former supervisor there.

DETERMINATIONS

Based upon a preponderance of the evidence and for the reasons discussed below, I make the following determinations:

1. The Fair Employment Practices Commission ("FEPC") was authorized to issue its Complaint on OCtober 23, 1979, even though the Notice of Substantial Evidence had been issued and served only six days before and all of the FEPC's endeavors to conciliate the charge had not yet failed. See Order issued herein December 15, 1980, attached hereto and incorporated herein by this reference.3/

3/ (footnote on next page)

2. The Human Rights Commission ("HRC") has jurisdiction over this cause and the parties thereto pursuant to Article IX of the Illinois Human Rights Act ("HRA"), Ill.Rev.Stat., ch. 48, par. 9-101 et seq. (1979 ed.), as amended by P.A. 81-1267, and is required thereby to apply the now-repealed FEPA, Ill.Rev.Stat., ch. 48, par. 850 et seq. (1979 ed.) and the Guidelines on Discrimination in Employment under the FEPA (1976) in determination of the merits of this cause.

3. Maura Burche is a proper complainant within the meaning of section 2(b) of the FEPA, having charged on her own behalf to have been personally aggrieved by one or more unfair employment

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3/ Continued

Respondent raised many other contested issues of law and mixed issues of law and fact in its prehearing memorandum, none of which have been briefed and only some of which were ever plead.

practices.4/

4. Caterpillar Tractor Company is a proper employer within the meaning of section 2(d)(i) and subject to the provisions of the FEPA.

5. Complainant has not established a prima facie case of hanicap discrimination because she has not shown that respondent refused to accomodate her as requested.

6. A motion for a directed verdict may be granted at the close of complainant's case when any element of complainant's prima facie case is totally unsupported by evidence of record.

4/ Complainant's initial charges of sex and national origin discrimination were dismissed by the FEPC in 1979 and no review was sought by complainant. The only charge now under consideration is her charge of discrimination on the basis of a mental handicap.

ANALYSIS

In a public hearing convened pursuant to the FEPA or the HRA where the complainant has failed to make out a prima facie case, i.e., where he has not presented at least some evidence of every element essential to his cause of action, the respondent is entitled to judgment in his favor as a matter of law. Jonathan Taylor and Illinois Gulf Central R.R., Charge No. 1980SF-0249 (HRC, Aug. 27, 1981). During the course of such a hearing and at the close of complainant's case, if the respondent moves orally on the record for a directed verdict the administrative law judge must first determine, as a legal matter, whether the complainant has made out a prima facie case. Id. If he has not, the administrative law judge may, without more, grant the motion, announce that dismissal will be recommended, and close the hearing record without requiring that the respondent present a defense. Id.

At my request respondent has now submitted its motion in written form, along with proposed findings of fact, determinations and legal argument. See Commission Rule 7.6. Both the complainant's attorney and the complainant herself have filed written responses to this motion which do not persuade me that my initial ruling from the bench was erroneous.

The FEPA requires employers to reasonably accomodate handicapped individuals upon request. Mary DeCarlo and City of Chicago Bd. of Ed., Charge No. 1978CN-0553 (HRC, June 19, 1981). Here the nature of complainant's handicap caused her doctor to ask that she be placed in a different job. Complainant reasonably expected the alternative position offered to be one which utilized her significant technical education and experience to the greatest extent possible. The clerical position which respondent offered her did not

all, but there is no evidence in the record from which it can be inferred that respondent could have offered her a position which utilized her background more.

In an employment discrimination case alleging failure to hire it is normally the complainant's burden to make a prima facie showing that he met the minimum qualifications for the job sought 5/

5/ Respondent contends that the U.S. Supreme Court in Texas Department of Community Affairs v. Burdine, _____ U.S. _____, 49 U.S.L.W. 4214, (1981) has imposed on Title VII complainants the additional burden of showing that the person hired was less qualified. I find nothing in Burdine to support an inference that it modified the prima facie burden of Title VII Complainants first enunciated in McDonnell-Douglas v. Green, 411 U.S. 792 (1973). Accord, Aiken v. United States Postal Services, _____ F.2d _____, 26 FEP Cases 1151 (D.C. Cir. 1981).

and that the job was in fact available when he applied. International Bhd. of Teamsters v.United States, 431 U.S. 324, n.44 (1977); A.P. Green Services Div. of Bigelow-Liptak Corp., 19 Ill.App.3d 375, 312 N.E. 2d 312 (1st Dist. 1974). The same should be true for a protected employee alleging failure to place in a suitable alternate position pursuant to a request for accommodation.

Complainant failed to establish such a prima facie case with regard to the salaried technicial positions available at respondent's Peoria area facilities prior to her discharge. Complainant's attorney argues that dismissal is too harsh a sanction where respondent did not fully comply with his subpoena duces tecum; it seems clear, however, that fuller compliance would not have produced any more documentation of non-union vacancies in technical positions at respondent's Peioria area facilities during the time period in question. Complainant herself argues that her attorney did

did not represent her well enough, I believe it is clear on this record, however, that this attorney could have done better only with additional discovery time and that it was complainant herself who insisted prior to hiring him that this hearing proceed without it.

In view of the foregoing I hereby recommend that this Complaint be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

BY: LINDA KRUEGER MacLACHLAN
Administrative Law Judge
Administrative Law Section

ENTERED ON THIS 30TH DAY OF NOVEMBER, 1981.

UNITED STATES DISTRICT COURT, FOR THE CENTRAL DISTRICT OF ILLINOIS PEORIA DIVISION

MAURA BURCHE	Plaintiff - pro se
vs.	Case No. 81 C 1130
Larry Clemens, Hank Kapraun, Marion Calton and Caterpillar Tractor Co. (or Cat)	Robert D. Morgan, Judge Defendants

FILED AUG 3 1981
ROBERT J. KAUFFMAN, Clerk
U.S. DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

COMPLAINT

COUNT I

Comes Now Plaintiff, Maura Burche and for Count I of her Complaint against Defendants, Larry Clemens and Hank Kapraun, states as follows:

1. That a Complaint against Defendants, was filed in Nov 9th, 1978 with Fair Employment Practices Commission, No. 79SF0220.

2. That FEPC found: Lack of jurisdiction in the Claim based on harassment because of sex and

national origin. -Substantial evidence for failure to recall from medical leave the Plaintiff, because of sex and national origin and also handicap. -Substantial evidence in termination because of mental handicap.

However the case was unjustly dismissed by an administrative law judge, in Feb 1981.

The Claim was forwarded to Equal Employment Opportunity Commission, charge No. 051790455. The Commission dismissed the Claim because "No reasonable cause was found to believe that the allegations made in Plaintiff's charge are true".

3. That Plaintiff received a NOTICE OF RIGHT TO SUE, from EEOC on May 4th 1981, allowing her to file a claim in US DISTRICT COURT, within 90 days from the receipt of this Notice.

4. That at all times material hereto, the Defendants Larry Clemens and Hank Kapraun were employed as laboratory technicians by Caterpillar Tractor Co. at Tire Development Laboratory-

Technical Center Building E,, Mossville, Illinois.

5. That Defendant Marion Calton, at all times material hereto, was employed as laboratory Chief of Tire Development Laboratory, Bldg. E at Technical Center, Caterpillar Tractor Co., Mossville, Illinois.

6. That Plaintiff Maura Burche was employed from March 10, 1975 to Mar 22, 1979, as laboratory technician at the Tire Development Laboratory, Technical Center, Caterpillar Tractor Co. in Mossville, Illinois, in the same Building E.

7. That Plaintiff is of the female sex, born in Romania and actually a U.S. citizen.

8. That Plaintiff was forced against her will, by Cat's doctor, to go to St. Francis Hospital for nervous treatment, on April 22, 1977 where she remained for almost a month, May 1977.

9. That from May 1977, the date she was dismissed from hospital up to March 22 1979, the day she was dismissed by Caterpillar, Plaintiff was

on medical leave.

10. That during the period March 10th 1975 up to April 22, 1977, the date Plaintiff was forced to go to the hospital by Caterpillar's doctor, the Defendants Larry Clemens and Hank Kapraun, individually and jointly, were engaged in outrageously, beyond any limit of decency harassment and criminal conduct against the Plaintiff. The harassment and the criminal conduct of the Defendants against the Plaintiff, were deliberately done with the purpose of damaging and destroying Plaintiff's health and life, family relationship, possibility to work by transforming her in a handicap for the rest of her life.

Through their connections, the Defendants damaged and disrupted the health and life of Plaintiff's children causing Plaintiff severe emotional stress, and severe suffering and emotional stress to the children.

11. The Plaintiff alleges the following

outrageous, inhuman harassment and criminal conduct by aforesaid Defendants:

A. The tensile machine Instron, which was upstairs, didn't work correctly, which occured for months, almost any time when the Plaintiff had to use it. The machine was under a strong trepidation, that she couldn't read the results of her tests. The Defendant Kapraun, who was in charge with the maintenance and the repairing of the machines in the laboratory, told Plaintiff that he couldn't do anything about it. However, he would fix the machine when other people needed it, to show that the Defendant was not capable of working with a machine.

Any time the Plaintiff worked with this Instron, a bolt from the cylinder which holds the diagram paper, was taken away. When the paper was unrolling during the test, the paper would break and it was impossible to use the machine. Both Defendants Calton and Kapraun have been informed by

the Plaintiff, but they said that is nothing which they could do, and that it is something wrong with the way the Plaintiff is using the machine. Finally the Plaintiff got help from a technician from the mechanical department. He just put a bolt to stop the cylinder to travel horizontally, and the paper didn't break anymore. Defendants Kapraun and Calton were very upset that their trick, which was set only when the Plaintiff had to work the Instron, was discovered.

B. Other traps were set for Plaintiff, very frequently, by Defendants Clemens and Kapraun. They would take turns in using for several days the Rheo and Mooney machines from upstairs, while Hank Kapraun was saying that he couldn't fix the other Rheo and Mooney machine downstairs. For this circumstance they would manage to have both machines downstairs broken down.

During these days Plaintiff would accumulate samples which she should run on the Rheo and Mooney

machines. To use her time, she would write her name on a note, to reserve the Instron machine downstairs, because the one upstairs didn't work.

When the Plaintiff was ready to work on the Instron, one of the Defendants, would come to the Plaintiff to let her know that the Mooney and Rheo machines upstairs could be used because they did not need them anymore. The Plaintiff having a lot of samples to be tested, accumulated for more than 10 days, had to leave the Instron machine, and hurry up to catch up with the tests, before the Defendants would take the machines for other 10 days. In this time Defendant Kapraun would fix the two machines Rheo and Mooney from downstairs.

After they arranged this trap, they would call the people to show that the Plaintiff was lazy and didn't do her work for days, also that she reserved the Instron machine and didn't use it, stopping them to work with it, that she is the one who erased her name from the Instron note and changed

the date, instead them, as is shown in subparagraph C, that she is nervously sick and wants to isolate herslef upstairs, instead to work downstairs with the Rheo and Mooney machines, which in fact were broken down when the Plaintiff needed them.

When Plaintiff told Defendant Calton, her former boss, about these traps, he said that these are her imagination and that she should go to a pyschiatrist because she troubles the people and does not let them work. In fact Defendant Calton was persuading her constantly, specially when the Plaintiff was working upstairs in laboratory, that she is nervously sick and that she should go to a psychiatrist for treatment.

C. When Plaintiff needed the Instron, she would write on a Note attached to the Instron, the time and date when she needed it for example 2 o'clock. Clemens would change the time by adding in front of 2, the number one and the time would become 12 o'clock. At 12 o'clock, Plaintiff by not

knowing anything about this change, did work with another machine. Defendant Clemens complained to Defendant Calton and to other people that he needed the machine and he couldn't work because the Plaintiff reserved it for 12 o'clock and didn't use it. When Plaintiff would want to use the machine at 2 o'clock, the time she reserved the machine, someone else was working with it, because was no reservation at that time. This happened daily, with other machines, Mooney, Rheo, curing press. As for ecs. Plaintiff's reservation for 1 o'clock was changed in 11 o'clock or 10 o'clock or viceversa. Defendant Clemens changed the reservation dates also. A technician Goeppinger from the mechanical department was the witness of a such change.

When Plaintiff informed Defendant Calton about this continuous harassment and traps, Defendant Calton accused Plaintiff that she is imagining things and that she is nervously sick, that she

troubles the people at work.

D. The micrometer was broken down and didn't hold zero. Plaintiff asked Defendant Kapraun to repair it, because it was his duty, but he said that he couldn't repair it and that she should bump the little arm to bring it to zero. The Plaintiff wouldn't agree to work in this manner because is was not recommended, but the work was pressing and she had to use it in this way. Also she had to follow Kapraun's advice because Defendant Calton pointed out that the Plaintiff had the duty to do exactly what Defendant Kapraun said when it came to the machines, because they were his responsibility.

After Defendant trapped the Plaintiff in this way, he called the Defendant Calton and other people to show them that the Plaintiff doesn't know to work with a machine or an apparatus and is capable of deteriorating them.

When technician Goeppinger asked her why she

works in this manner, she explained him that Defendant Kapraun instructed her to wrk in this way, because the Micrometer couldn't be repaired.

The aforesaid traps and lies of Defendants Clemens and Kapraun caused extreme emotional stress to the Plaintiff because she was blamed and criticized by her boss, Defendant Calton who wrote blaming reports to the management, without Plaintiff's knowledge. Also Plaintiff could never get a machine when she needed one because Defendant Clemens and Kapraun would manage, as in the aforesaid cases, to stop Plaintiff in using any machine. Consequently Plaintiff had to work many times late at night to finish her work. The aforesaid traps, and harassement caused Plaintiff to be upset and cry every day, and to work under severe emotional stress.

E. The Plaintiff received cured samples from Defendant Clemens, to be pulled on the instron for tensile test. The Defendant Clemens had not

cured enough the samples. The tensile values were unusual low for these samples which intrigued the Plaintiff. She observed that Plaintiff Clemens showed Defendant Calton other samples which were correctly cured, which had a much higher value of tensile strength, complaining that Plaintiff made an error. She informed Defendant Calton and he seemed to have a very good time.

F. Any time Plaintiff made arrangements to obtain a press for curing rubber compounds, Defendant Clemens told the co-worker Herb, who was working with the curing press, to not allow Plaintiff to work with the press because she wants to do her job first, and wants to show that she is something. After Defendant's Clemens instigation, Plaintiff couldn't obtain the press anymore, which made it difficult and impossible for her to work.

Plaintiff told Defendant Clemens to go to his own work, because it was not his business to instigate the workers against her. He answered,

"Yes it is my business".

G. The Defendant Calton told the Plaintiff to use a machine only if she reserved it, writing down the date and time when she needed it. When the Plaintiff proceeded according Defendant's Calton instructions, asking also every one if they needed the machine, the co-workers including Defendant Clemens answered negative. The moment Plaintiff started to work with the machine, Defendant Clemens complained that Plaintiff took from him the machine and he is disrupted in his work by the Plaintiff. Defendant Calton would angerly criticize Plaintiff telling her that he doesn't care if she reserved the machine, that she shouldn't use it, that she is troubling the people at work. At the Plaintiff question how and when could she use a machine without being blamed, both Defendants left the room without answering.

Plaintiff was under severe stress because it was impossible to work and was harassed every day

by Defendants which repeated continuously the aforesaid harassment. She received criticisms from engineer Henry Guay, that she should work faster.

H. Defendant Clemens worked with the Instron downstairs. After a while he offered the machine to the Plaintiff, because he said he was tired and didn't want to work anymore. When Plaintiff started to work with the machine, Clemens came with Calton and complained that Plaintiff took the machine from him.

I. Defendant Calton acused Plaintiff continuously that she troubled the people. When Plaintiff informed him about her harassment and the impossibility to work, he told her that the boys are only joking and that her complaint about her outrageous harassment is imaginary. All the harassment was going behind Plaintiff's back, although Defendant Calton never mentioned how precisely Plaintiff was troubling the workers. For this reason Plaintiff asked to have a meeting with

all the co-workers to find out how is she troubling them at work. All the workers present, including Defendants Clemens and Kapraun denied that she is troubling them and no one brought any complaint. However the harassment continued and Defendant Calton continued to harass the Plaintiff and support the Defendants in their harassment against the Plaintiff.

J. Plaintiff worked with the Instron machine. When she left for few minutes, she found the instron broke down. After the Instron was repaired Defendant Kapraun started to work with it, without allowing the Plaintiff to finish her work. When Plaintiff asked Defendant Kapraun if he would allow her to finish her work, he became angry and complained to Defendant Calton. Defendant Calton angerly criticized Plaintiff for daring to ask Defendant Kapraun if she could have the machine to finish her work.

K. Plaintiff's samples were continuously

thrown away. The samples for heat build up test, were saved by Plaintiff in the machine. Defendant Clemens threw the samples on the floor and spread the rumor that Plaintiff was nervous, that she didn't know what she was doing and that she threw her samples on the floor. Next day he agreed in front of Defendant Calton that he threw the samples on the floor. This situation continued to be repeated and amused Defendant Calton, who considered it as a joke. This harassment caused Plaintiff to work more. She had to lose other time to cure other samples, and was blamed in the same time that she was not capable of working.

L. Plaintiff was gauging almost 450 samples when Defendant Calton came with Defendant Clemens to blame her that she was not working. Defendants Clemens and Kapraun were continuously supervising the Plaintiff accusing her that she doesn't work, creating a tremendous pressure and emotional stress for Plaintiff who was obliged to

stay up to 9 or 10 o'clock P.M. to finish her work or to work home up to 2 or 3 A.M. to compensate the outrageous harassment of the Defendants which made it impossible for her to work.

M. Plaintiff asked Defendant Calton she could work in the second shift so she would not be in contact with the Defendants and also to have available the machines to work, but Defendant Calton refused. He wanted to keep her to work together with the Defendants, to be harassed beyond any limit of decency, to blame her work and find an excuse to fire her or send her in hospital for nervous treatment.

N. Plaintiff had to work continuously on the adhesion tests, which means to determine the force necessary to pull apart two plies of rubber compound T204, B320, T207, V904, after they have been curred together. She had to study the decrease of the adhesion force, in time, after the rubber plies were left exposed on the table to the

light, air and air impurities for several days and weeks.

To sabotage Plaintiff's work, the Defendants cleaned with solvent the rubber plies, from time to time, causing errors in determination of the adhesion, and a higher adhesion force. Plaintiff spent months working late in laboratory and many time working home till 3 AM, verifying the results. She told Defendant Calton that someone was cleaning with solvent the rubber plies and that she obtained errors in determinations. All three Defendants were laughing and seemed to be very happy when they found out that she worked almost daily, late at home. Defendant Calton accused her that she falsified the results that she made errors in determination and that she imagined the harassment.

To make even more wide the parody of his management, Defendant Calton asked Defendant Kapraun to investigate why she obtained high values of the adhesion.

The Defendant Kapraun, in connection with Defendant Clemens, would increase the pressure during the curing of the samples, when the Plaintiff was not present, and then would show the people and Defendant Calton that the cause the Plaintiff had errors in the adhesion test was because she had too high pressure during the curing.

Plaintiff proved that if plies of mentioned compounds were exposed to the air for 10-20 days, and cured at the highest pressure possible, the force of adhesion would be still so low that the plies could be separated by hand instead the machine.

Though the Plaintiff proved that she was right, the sabotage of her work continued, while the Defendants had a very good time.

The severe emotional stress produced by outrageous harassment, the daily humiliations, the lies, the traps, the sabotage of her work, the fear

that she will lose the job, that they will succeed in sending her to the hospital for nervous treatment, the fear that she will not be able to find any job and couldn't support her two children who were in her custody after her divorce, made her to cry daily and lose sleep.

O. Defendants Clemens and Kapraun called Plaintiff moose, made noises as a moose does, when she came in the room and would say, "Here comes the trouble, here comes the moose".

They brought the head of a moose, stuffed, and hanged it on the Inston machine. They crowned it with a mortuary crown and they said that they will bury the moose. This explained why Defendant Clemens said several times when he meet Plaintiff: "May be I will kill my self", to give Plaintiff a suggestion. Their expectations was to bring Plaintiff to despair through harassment, to get her nervously sick and maybe to lead her to suicide.

Defendant drew a moose on the Romania map which

was in the laboratory. Co-worker Robert Schoolman saw it and Plaintiff heard him saying to Defendant Clemens: "Yes, but the moose is on Romania map".

Defendant Kapraun drew several times a moose on different machines on Instron downstairs, under the paper for diagrams, behind the oven downstairs in the Instron's room. Their conduct showed an outrageous harassment because of national origin of the Plaintiff.

P. Defendant Clemens made from a rubber compound, the form of an excrement, put it in the door way in the downstair laboratory and told the Plaintiff: "This is you".

This harassment was outrageous, cruel, beyond any limit of decency, humiliating, and caused a great emotional stress to the Plaintiff.

R. Clemens told Plaintiff to go back to Romania and Plaintiff answered that he should go to Romania because his behavior fits exactly Romanian regime.

S. Defendant Clemens was making sexual suggestions to Kapraun in connection with the Plaintiff and her family which is a direct sexual harassment.

Defendant Clemens suggested to Defendant Kapraun that he should get together with Plaintiff, also he said to Defendant Kapraun: "She is bringing her daughters to Peoria, what do you say? and "She wants to have grand childrens, what so you say?" with an undoubted meaning and laughter.

If this is not enough to make anyone sick, they wrote sexual words "I fuck you" on the machine Plaintiff was using upstairs Mooney and Rheo chart, and also downstairs on the heat build up machine.

T. Defendant Kapraun menaced the Plaintiff with the fists two times, screaming at her "Shut up or I will."

Plaintiff was all the time under terror, fear, humiliation, strong emotional stress, because of this unhuman, cruel harassment, beyond any limit of

decency.

U. Due to the unhuman harassment, Plaintiff started to present symptoms which lead her to believe that Defendants were putting drugs in her coffee and drinks, but no doctor confirmed her beliefs. She had: unbearable stomach pain, indeigestions, allergies, headaches, vomiting, frequent urinary infections with blood in the urine, intestinal bleeding, bone pains, flashes, back pain, pulmonary infection, strong coughing, chest pain, heart palpitations, dizziness, confusion, forgetfulness and skin infections - psoriasis and warts. She had also peeling of the skin on the palms and nails deformed.

She went to 10-12 doctors who made a complete physical check and they gave Plaintiff different diagnosis.

Plaintiff informed Caterpillar management and Defendant Calton that she believed that Defendants Clemens and Kapraun put drugs and damaging

chemicals in her coffee and drinks. Defendant Calton told Plaintiff that was her imagination and that she had all those symptoms because she was nervously sick.

V. Defendants Clemens and Kapraun jointly and separately concurred with Defendant Calton and Caterpillar to show that Plaintiff was nervously sick and forced her to go to hospital for nervous treatment. Through lies, traps and harassment they accused Defendant that she was not capable of working that she troubled the people because she was nervous sick. They succeeded in forcing her to go to the hospital, though she was capable of working; she was cooperative and polite toward the other people, never disturbed them in their work as could testify co-workers Robert Schoolman, Herbert, Goeppinger and Eng. Thomas Leonard. She always gave up a machine when a worker needed it, though she had her work to do and had to work later to finish her work.

In the hospital Plaintiff felt very sick, and as a result of the treatment in the hospital she was disabled and incapable of working for more than a year.

X. Defendants Clemens, Kapraun, Calton and Cat. continued the same pattern of harassment as their connections from Bandag, Inc., the former employer of the Plaintiff, before Caterpillar. At Bandag Inc. Plaintiff was harassed in the same manner by co-workers Herman, John Maxwell and her former boss Roger Clefman, through lies, traps, sabotage of her work and had many of the symptoms she presented at Caterpillar: flushes, hear palpitations, vomiting, headaches, angryness, of which she couldn't find out the cause. She was fired by Bandag, Inc. because the company agreed with Plaintiff's harassors, that she had a personality problem, though the Plaintiff informed Bandag's management about her outrageous harassment, beyond any limit of decency.

Defendant Calton was fully informed by Bandag Inc. and his connenctions at Bandag, about Plaintiff's harassment at Bandag Inc. He accused the Plaintiff verbally and in his reports that she had similar problems at Bandag, because of her personality problem. Defendant Calton continued to harass Plaintiff using the same theme as Bandag: the personality problem.

Y. Defendants spreaded the rumor in laboratory that Plaintiff is a drug user, that she hears telephone noises, that she can't find anything because she is confused because of drugs.

The psychiatrist Dr. Ward and Caterpillar employee Doris Logan asked Plaintiff if she heard telephone noises and Plaintiff answered negative. To trap the Plaintiff, Defendants would call her at 1 or 2 AM, disrupting Plaintiff's children sleep, who would run to pick up the telephone, then they spread the rumor that she heard noises. Due to the rumors that Plaintiff is a drug user, a technician

from the mechanical department asked her if she was taking drugs, if she is a drug user.

To show that Plaintiff was confused and can't find anything, Defendant Clemens hid very often the dye to cut the rubber for tensile test, and the he put it back. When the Plaintiff asked where the dye was, he would show her that it was in the drawer where she looked before but she was not capable of finding it.

The secretary of the dentist Moon R. in Peoria, told Plaintiff that she can't give Plaintiff any appointment because Plaintiff had a personality problem, which puzzled the Plaintiff.

The Defendants spread the rumors that Plaintiff is a lesbian or has unnatural sexual drive, because the ladies at the church, as Mrs. Leona Millen looked horrified when Plaintiff would touch her children's hand or her hand.

12. Due to the aforesaid unhuman, outrageous harassment, beyond any decency or human limit,

Plaintiff was under severe emotional stress, under fear and horror that she might be beaten by the Defendants, she was continuously humiliated, she was under great worry and terror that the Defendants would succeed through their criminal acts and their connections to get Plaintiff ill and handicapped, which they in fact succeeded. The Plaintiff was under extreme worry, and emotional stress that she might lose the job, that she will be incapable of finding another one due to the blames and lies which were spread by Defendants and their connections to people and other companies.

13. Plaintiff suffered unbearable physical and emotional pain due to her continuous illness.

14. She was under terror, fear, despair, severe emotional stress when she saw that her children had severe physical pain and symptoms: vomitting, heart beating, flashes, indigestions, pulmonary infections, skin infections, allergies, eyes swollen, swollen fingers, sleepiness,

headaches, sensation to fly.

None of the many doctors who have seen the children could find any cause which would provoke all those illnesses.

15. She was under tremendous emotional stress, pain, despair, that she cried and lost her sleep because she had daily quarrels with her children and parents, who couldn't understand that it was possible to exist such a criminal harassment which continued for years, and still Caterpillar didn't make any serious and honest attempt to eliminate it. Her relationship with her children was destroyed, the children lost their confidence in their mother and they were convinced that she was nervously sick, and all what she was telling them were only her imagination.

16. She lost her job with Caterpillar, she was incapable of finding any other job because of the blames spread by Defendants and their connections to any people or company the Plaintiff would

contact.

17. She was disabled and incapable of working for more than one year and was through unbearable sufferings due to the harassment and criminal conduct of the Defendants and their connections.

18. Plaintiff lost a substantial amount of money being unemployed, losing her job with Caterpillar, spending money to care for her health and her children's health, spending money with lawyers in claims and law suits against Defendants, in real estate business, in the period of time she was incapable of working or taking any decision.

19. Damages in this case exceed the amount of $950,000.00 for each Defendant.

20. That in addition to the foregoing Defendants engaged in the aforesaid cruel and unhuman harassment, wilfully and with the purpose to destroy Plaintiff's health and life,her family health and life, Plaintiff is entitled to punitive damages in amount of $500,000.00.

Wherefore Plaintiff prays for judgment against Defendants Clemens L. and Kapraun H. in the amount aforesaid, to compensate at least in part the damages, the injury and Plaintiff's sufferings which in fact could never be compensated by any amount of money.

COUNT II

Comes Now the Plaintiff Maura Burche, and for Count II of her Complaint against Defendant Marion Calton states as follows:

1. - . Plaintiff repeats and realleges Paragraphs 1 through 18 of Count I as Paragraph 1 - 18 of Count II as though set forth herein in full.

19. That Plaintiff informed the Defendant Marion Calton, her boss, very often, verbally and in writing about the extreme outrageous harassment and criminal conduct aforesaid, against Plaintiff by the Defendants Clemens and Kapraun.

20. That Defendatn Calton didn't make any

honest investigation of Plaintiff's claim about her harassment at work.

21. That he did not eliminate or did any serious attempt to eliminate the harassment of Defendant by Defendants co-workers.

22. That he kept Plaintiff permanently in contact with her harassors, being informed that she had severe physical pains, that she was under severe emotional stress, that she was humiliated, sabotaged, sexually harassed, menaced by Defendants Clemens and Kapraun as aforesaid.

It was a permanent exchange between the workers from the laboratory and Cat's Plants with other location, but Defendant Calton never attempted to exchange the Defendants Clemens and Kapraun or Plaintiff, to eliminate Plaintiff's harassment.

Moreover, Plaintiff proposed to work in the second shift, to be protected of the Defendants' harassment and to have the possibility to work with the machines. Defendant Calton refused, with the

intention to keep Plaintiff under the cruel and crminal harassment conducted by Defendants Clemens and Kapraun, with the purpose to destroy her health, and life, to transform her in a handicapped.

23. He covered up the harassment against Plaintiff, by Defendants Clemens and Kapraun telling her that the boys are joking and there isn't any harassment but her imagination and nervous sickness.

24. Defendant Calton wrote behind Plaintiff's back reports to the management, without informing the Plaintiff. In these reports he lied and unjustly blamed the Plaintiff that she was not capable of working because of her nervous illness, and that she troubled the people and do not let them to work. That Defendant lied in his reports, is the affirmation of the Engineer Thomas Leonard, who supervised Plaintiff's work in the last months before she was forced to go to hospital, his

testimony and others workers testimony that she never troubled anyone at work.

In her effort to inform Defendant Calton about the extreme outrageous harassment, Plaintiff asked for a meeting with all the co-workers and Defendant Calton, to find out if anybody had any complaint against her. When she put this question at the meeting, no one brought any complaint and the answer was negative, including Defendants' Clemens Kapraun answer. However, the harassment continued and became even worse.

25. That the entire harassment was hidden by Defendant Calton from the management and Plaintiff through his lies as follows:

He informed the Plaintiff, that the Manager R. Untz wanted to have a meeting with Plaintiff and Defendant Calton, to give her an assignment. At the meeting Plaintiff noticed that the manager R. Untz didn't have any intention of giving her any assignment, but to discuss with her certain

complaints brought to him by the Defendants. The manager started to give her advices about how to behave at work and asked Defendant Calton if he told anything to the Plaintiff. Defendant Calton answered affirmative, which was a lie. The only thing he told the Plaintiff was about an assignment. Plaintiff was confused and couldn't understand why she was receiving advices from the manager about how to behave. The same lies were repeated by Defendant Calton in other meetings with Manager Untz in his office at Pioneer Park and at Technical Center.

Another example of Defendant Calton lying and covering up the cruel harassment and the criminal activity of the Defendants, is the meeting which had place several days before the Plaintiff was forced to go to hospital. In the meeting was manager R. Untz, Defendant Calton and Plaintiff. The meeting took place at Plaintiff's request, trying to find out which were the complaints and

how it was possible that she troubled the people, as Defendant Calton was blaming her. At her question, Defendant Calton answered that no one had any complaint against defendant and that no one was harassing her, and he dismissed her. When the Plaintiff was at the door, manager Untz asked the Plaintiff if she was satisfied with the answer. Plaintiff answered that she was not, because as usually when she tried to find out which were the complaints against her, Defendant Calton covered them up.

26. That Defendant Calton used his position to intimidate the Plaintiff, menacing her that he will fire her if she will complain any more. He told her a lie, that the manager Untz was very angry that she complained to him last time and that she should not do it again, because she will be fired.

27. That Defendant Calton kept the Plaintiff without any work for weeks and that Plaintiff had to ask him repeatedly for work. Plaintiff had to

ask co-worker Schoolman to share his work with her because she didn't have any assignment. In this time Defendants Clemens, Kapraun and Calton were supervising her, spreading the rumors that she doesn't work because she can't.

Plaintiff informed Mrs. Conny Fraser, Personnel Supervisor and Mr. Higgins, the Chief of the Personnel at the Technical Center about her harassment that the Defendant Calton doesn't give her any work. The Personnel Supervisor told Plaintiff to go back to Defendant Calton and ask him for work, which Plaintiff did but without any success.

28. That Defendant Clemens hid tensile samples for days in the drawer in the press room, and gave them to the Plaintiff only when everyone had the duty to clean the laboratory. In this way Plaintiff either didn't have any work or had so much that she couldn't finish and had to stay late to finish her work. Also when she had to clean

the laboratory, Engineer Henry Guay asked her to test the samples which were hidded by Clemens, in the same time Defendants Calton, Clemens and Kapraun blamed her that she doesn't do her work and that she doesn't clean the laboratory.

29. That Defendant Calton encouraged Defendants Clemens and Kapraun giving them raises praising them, while he proposed Plaintiff to be layed off because she troubled the people.

30. That Defendant Calton was seen by Plaintiff at work when he couldn't talk or keep his eyes open and he had to leave. Eng. Henry Guay told Plaintiff laughing that Defendant Calton received a shot in the mouth from the dentist and he had to leave several times.

Plaintiff alleges that Defendant Calton had a drug or drinking problem which was the reason of his transfer from the mechanical Department to the rubber testing laboratory at Tire Development without having any background or experience in the

rubber technology.

Any time when Plaintiff asked for technical advice,Defendant Calton would send her to Engineer H. Guay because he didn't have any knowledge to make a decision.

31. That Plaintiff wrote a letter on Apr. 21st 1977 to Caterpillar's management and to Defendant Calton that she was drugged by criminal people from laboratory. Next day, Defendant Calton wrote a report to the management that Plaintiff is nervously sick and that she can't work any longer. He sent her to Cat.'s Dr. Ashbury telling her that the doctor wanted to see her for a reason the Defendant Calton would not know.

32. Dr. Ashbury recommended that Plaintiff should go to the Dr. psychiatric Emmi Andri. He gave her the name of the doctor, the address and the time of the appointment.

Plaintiff reported to Dr. Andri the harassment and the illnesses Plaintiff had continuously.

Without making any investigations about the Plaintiff's conditions at work and her allegations, or any laboratory test or psychiatric test, Dr. Andri decided that Plaintiff was nervously sick, paranoid and told her to go to hospital for nervous treatment, which the Plaintiff refused, and returned to work.

Defendant Calton sent Plaintiff, the same day, again to Dr. Ashbury. Doctor Ashbury told Plaintiff that she had to go to hospital and got angry at Plaintiff's refusal. He told her that he would put her on medical leave and take away her identification card so she couldn't enter Technical Center and come to work.

Plaintiff didn't have any choice but to accept going to hospital.

33. That when the Plaintiff went to hospital, she was capable of working and performing all her duties. That during the treatment at St. Francis Hospital, Plaintiff became extremely sick. She

couldn't speak and keep her eyes open, she had urinary infection and blood in the urine, she started to walk for hours in the hospital's hall, because she couldn't sit still on a chair and she was very tense also and couldn't see very well. She was seen in this condition when she had difficulty of talking and in the impossibility of keeping her eyes open by Caterpillar's employee Doris Johnson and brother Eugene Phillips.

34. As a result of the harassment at Cat. and of the medication, Plaintiff was disable for more than a year and in impossibility of working. She became afraid of the knife, her muscles were very tense, when she sat on a chair she had to move continuously her legs, she walked for hours in the room not being able to sit still on a chair, she threw herself on the floor screaming and scratching the floor with her nails. Her psychological and emotional sufferings were unbearable.

35. As a result of the cruel and unhuman

harassment at work by Defendant Calton who encouraged, covered up and joined in harassment also, the Defendants Clemens and Kapraun against Plaintiff, she had severe emotional stress, severe physical suffering. She had to work while her knee was painful, her back was painful, she couldn't cut samples because her elbow was painful, she had to run 20 times a day to the restroom because of her extremely painful urinary infection, she was coughing and had severe chest pain, though she didn't miss work and stood late to work up to 9 P.M. and then up to 2-3 A.M. at home, very often, to finish her work. Her life was a long torture.

She was scared of the harassment at her work, she was worried and horrified that she would become permanently sick as a result of the criminal harassment by Defendant Calton, she was continuously humiliated, and persecuted by Defendant Calton.

36. Plaintiff was sent to the hospital against

her will, by Caterpillar's doctor in connection with Defendants Calton, Clemens and Kapraun, without any laboratory or psychological test or any investigation.

37. She became disabled and very sick for more than a year due to the treatment in the hospital, as a result of forcing her to go to hospital by Defendant.

38. She lost her job with Caterpillar because was considered as a handicapped by Caterpillar, and couldn't find any other job or keep a job because of the humiliating, unjust reports of Defendant Calton and because of the lies he spread in connection with the other Defendants, when a company would ask information about the Plaintiff.

39. Plaintiff lost a great amount of money, being without job for more than four years, spending money with the doctors to care about her health and children's health, spending money with attorneys for her claim against Defendant, and

losing money in the real estate because of her disablement.

40. Plaintiff had severe emotional stress, worry, despair because her relationship with her family and specially with her children were destroyed. They didn't have any trust in their mother and considered her as a sick person. They couldn't believe that it was possible that a such criminal harassment to go on for years and no one would attempt to eliminate it.

41. Damages in this case are in amount of $950,000.00.

42. That in addition to the foregoing Defendant engaged in the aforesaid cruel beyond any decency, unhuman harassment, wilfully and with purpose to destroy Plaintiff's health and life, her family health and life, Plaintiff is entitled to punitive damages in amount of $500,000.00.

Wherefore Plaintiff prays for judgement against Defendant Marion Calton, in the amount aforesaid to

compensate the Plaintiff for her suffering, damages and injuries.

COUNT III

Comes Now the Plaintiff Maura Burche and for Count III of her Complaint against Caterpillar Tractor Co. states as follows:

1. Plaintiff repeats and realleges Paragraphs 1 - 18 of Count I, as Paragraphs 1 - 18 of Count III as though set forth herein in full.

19. Plaintiff repeats and realleges Paragraphs 19 to 40 of Count II as Paragraphs 19 to 40 of Count II as though set forth herein in full.

41. That during the aforesaid acts of the Defendants employees aforesaid, Defendant had a duty to the Plaintiff as its employee to honestly investigate and eliminate aforesaid outrageous, beyond any limit of human conduct harassment, which was destroying Plaintiff's health and life, her possibility to work in the future, her children's

health and life and her family relationship, causing the Plaintiff severe emotional stress, pain, despair, worry for health of her children. Defendant failed its duty to eliminate the outrageous harassment.

42. Defendant was fully informed by Plaintiff, about the cruel and criminal harassment by the aforesaid employees, verbally, in meetings and through letters sent to the Manager Grawey, Untz, Defendant Calton, Personnel Department Supervisor Fraser and Chief of the Personnel Higgins. From her hospital bed Plaintiff called Manager Grawey and told him that she believed that she was drugged at work and that she believed that she was drugged continuously in the hsopital, by the medical personnel, the nurse who gave her the medication at noon.

43. Defendant harassed Plaintiff by keeping her in work with Defendants employees, instead of eliminating the harassment by transferring to

another place of work, the Defendants or the Plaintiff.

44. Defendant knew that Defendant Calton had problems with drugs or drinking, and despite Plaintiff's claim Defendant continued to keep him as chief of laboratory.

45. Defendant knew about serious problems Defendant Kapraun had at his former employment, and was expected to continue to have the same problems and still Defendant allowed him to work in the same place with Plaintiff despite her complaint.

46. Defendant told Plaintiff to go to hospital, abusing its power. Following this harassment, Plaintiff was disabled for more than a year because of the medical treatment she received in the hospital. If the Defendant would have insured to Plaintiff normal conditions of work instead of forcing her to go to hospital, the Plaintiff would never have become disabled and she would never suffered for years horror, fear,

humiliation, harassment which caused her strong emotional stress.

47. Defendant refused to receive the Plaintiff back to work after the doctors released her to work and continued to consider her as a handicapped, incapable of working in the same position or in a similar position.

48. Defendant failed to require an other Caterpillar Plant to hire the Plaintiff. Defendant can require in special cases as they did in Defendant's Calton case, to hire the Plaintiff, because Plaintiff was a special case created by the Defendants themselves.

49. Defendant released informations about Plaintiff's work and behavior which were unjust and were derived from Defendant's Calton reports, to all the companies who were contacted for a possible employment of the Plaintiff. As a result of these informations, the Plaintiff couldn't find a job up to the present time.

50. Defendant refused to offer Plaintiff a technical job, on probation basis, to investigate if Plaintiff was capable of working, after she was released by the doctors to work without any restriction. The only restriction the doctors recommended was the Plaintiff should never work again together with Defendants Calton, Clemens and Kapraun.

51. That Defendant offered Plaintiff a clerk II position in Mar 1979, considering that Plaintiff was a handicap incapable of doing any technical job, and that the only job she could perform was to carry the mail and the prints to different offices. Plaintiff refused the job which constituted a moral degradation and a continuance of her harassment.

52. Defendant used Plaintiff's refusal as an excuse to fire her on Mar 22, 1979, only several weeks before the new Caterpillar Plant in Davenport started to hire hundreds of employees and had a large laboratory. Defendant continued to harass

Plaintiff, by avoiding its obligation to find a job for the Plaintiff at the new Caterpillar plant in Davenport, which had large possibilities of employment.

53. Defendant's argument that they couldn't find any job for the Plaintiff because she has a limited speciality, rubber testing, had no ground. Plaintiff has a degree in chemical engineering, coal gazeification speciality. She had courses of chemistry, rubber technology, mechanics, mathematics, coal distillation, eletrochemistry, general technology, and electricity. She worked more than 25 years in different industries: rubber industry, oil industry, mechanical industry - tire engraving. Plaintiff's background and work shows that she could work in any rubber or mechanical laboratory or plant at Caterpillar.

55. Defendant refused to disclose the list of all the people hired by Caterpillar, after Plaintiff was released to work.

Defendant hired people with lower education thatn the Plaintiff who were trained while they were working, though Defendant refused to offer Plaintiff any job.

56. Plaintiff has several laboratories in building E, including a chemical laboratory. The people who work in these laboratory have absolutely no connection or contact with the people who work in the rubber testing laboratory - Tire Development. Plaintiff could work in any of these laboratory, without having any contact with the Defendants Clemens, Calton and Kapraun. Besides the laboratory at Technical Center Tire Development is an exclusive a rubber testing laboratory. Only very few people with special assignments co[illegible] to work from another department in this laboratory. The chances that Defendant would have been in contact with the Defendants if she would have worked in building E would have been unexistent.

57. Defendant had possibilities for

Plaintiff's employment at its rubber testing laboratory at downtown Plant in Peoria, at East Peoria Plant, Water treatment Plant, and mainly at the new Davenport Plant. Defendant continued to harass the Plaintiff by refusing her any of these places of employment, considering Plaintiff as a handicapped.

58. That as a result of aforesaid harassment, allowed and conducted through its employees, Caterpillar caused Plaintiff severe emotional stress, fear, horror, humiliations, and a great concern about her health and her impossibility to work.

Also Caterpillar made impossible for the Plaintiff to find any job or to keep a job, causing her to lose a big amount of money.

Caterpillar refused to offer Plaintiff any job and than dismissed her causing also a loss of money.

As a result of the unhuman, outrageous

harassment Defendant was frequently sick, and disable for more than a year causing her severe sufferances and loss of money that she spent with the doctors.

Plaintiff lost money spending for the lawsuit she had against Defendant and also while she was disabled and in impossibility to make any decision she lost money in the real estate business.

Defendant caused great emotional stress, worry and despair to Plaintiff because of the damage of her relationship with her family and the daily quarrells she had with her family.

59. Damages in this case are $950,000.00.

60. That in addition to the foregoing, Defendant engaged in the aforesaid cruel and unhuman harassment, willfuly and with the purpose of damaging Plaintiff's health and life and her family's life.

Plaintiff is entitled to punitive damages in amount of $500,000.00.

Wherefore Plaintiff prays for judgement against Defendant Caterpillar Tractor Co. in the amount aforesaid to compensate the damages, the injury and Plaintiff's sufferings.

Plaintiff prays also the Court to supoena FEPC to present the cases of outrageous harassment because of sex and origin which they found during their investigaiton of Plaintiff's conditions of work at Caterpillar. The investigator Blaser from FEPC found more than 24 cases of harassment against Plaintiff, by the Defendants which can be disclosed only on the Court's Order.

M. Burche

Pro se

L-1

Fair Employment Practices Commission

11-1-1979

Dear Mrs. Kuhr,

I ask Caterpillar Tractor Co. to release the following letter, not because I want to prise myself, but to reject all the accusations which have been thrown at me for almost four years, and I did not deserve them at all.

As we discussed on the telephone regarding a settlement with Caterpillar, I would like to have a letter from Caterpillar, which should be also attached to my work dossier and signed by the Chief the Tire Development and the Chief of Personnel stating:

> "That Caterpillar Tractor Co. had a labor dispute with Mrs. Burche, and following a thorough search and analysis of this situation by the Fair Employment Commission and by Caterpillar Tractor Co. we concluded that Mrs. Burche has been unfairly treated, harassed and discriminated against during her work at Caterpillar Tractor Co. Research Laboratory Tire Development, by her boss Marion Calton

and two co-workers L. Clemens and Hank Kapraun and that Caterpillar had not taken an effective action to eliminate on time the harassment and the discriminatory behavior of the three mentioned employees of Caterpillar Tractor Co.

As a result of this treatment, Mrs. M. Burche became nervously sick and Caterpillar had to refer her to a psychiatrist.

We disapprove and reject any blame or report attached to her work dossier written by Marion Calton, her former boss, regarding her work, her personality, her behavior toward other people and co-workers.

We are convinced that Mrs. Maura Burche is a very hard working person, that her work was correct and of good quality, that she was very efficient in her work and attached to our company. Also she did not have any personality problems but contrary she is very cooperative, polite and friendly toward other people she worked with.

As a result of these findings we agree to repair the damage caused to her health and reputation, by reinstating her in a technician job similar to the one she holded before her illness, in the city of Davenport where she relocated after it was clear for her that Caterpillar

refused to offer her any job when she became capable of work.

The salary for the technician position we intend to offer her, will be brought up to date by taking in consideration the increased salary she would have had if she would have had work continuously at Caterpillar and also the cost of living. She will be considered as an employee of Caterpillar without interruption, preventing her to lose her seniority at Caterpillar or other benefits in connection with the continuity of the work.

We also agree to repay her the loss of money due to absence from work, and the suffering and the trauma due to the harassment at her work and her illness caused by the harassment, as well as legal fees and medical expenses in connection with this matter.

The amount to cover all the above mentioned items and drop any claim against Caterpillar is $25,000."

I do not really think that Caterpillar would entirely make up to me by accepting my proposal, because for any amount of money existing in the world I would not agree to pass again through all the suffering resulted from my illness and the

treatment I had during my work at Caterpillar Tractor Co., but I would accept this compromise if Caterpillar decides not to go to Court. Only God would know what meant for me all these last years.

Regarding the work reports M. Calton wrote, I would like to be rejected from my work dossier all those written starting with the one dated 4-2-1976 (which in fact I didn't receive from Mr. Blaser) together with any other reports he might have written. The papers you have from Cat do not contain all M. Calton's reports. For ex. is missing one in which he proposed me to be lay-off without any payment also two other reports Mr. Kolb (from Cat.) read at the meeting with Fair Employment on Feb. 23, 1979. In these reports M. Calton stated that my work is incorrect and sloppy and also he affirmed that I refused once to take a treat of chocolate and that for this reason he referred me to doctor Ashbury as a person nervously ill. Mr. Blaser confirmed that he doesn't have any

of these reports and Mrs. Frasier said that all the papers have been sent to him and he should have them.

As you can see there are several other reports made by Calton which we do not have them.

Yours very truly

Maura Burche

M-1

STATE OF ILLINOIS

FAIR EMPLOYMENT PRACTICES COMMISSION

CENTRAL OFFICE: 179 WEST WASHINGTON STREET, 4TH FLOOR . CHICAGO, ILLINOIS 60602 312/435-6200

REGIONAL OFFICE: 3 WESTOLD STATE CAPITOL PLAZA MYERS BUILDING, 2ND FLOOR, SPRINGFIELD, ILLINOIS 62701 217/782-1927

October 23, 1979

Ms. Maura Burche
1710 West 52d Street
Davenport, Iowa 52806

Mr. Bill Mastronardi
100 N.E. Adams Street
Peoria, Illinois 61629

Re: Burche and Caterpillar Tractor Co.
Charge No. 1979SF0220

Dear Ms. Burche and Mr. Mastronardi:

Mr. Tom Jackson of Respondent informed me today that Respondent desires Conciliation efforts in the above matter, and is available to meet the week after next.

Per our phone conversation earlier today, I have therefore scheduled a conference for Monday, November 5, 1979 at 11:00 a.m. in Room 400 of the Peoria City Hall, 419 Fulton Street, Peoria, Illinois. If we are able to exchange ideas over

the phone prior to that date, the meeting may prove unnecessary.

As I explained, Ms. Burche is seeking in settlement of her charge:

A technician position at whatever salary she would have been earning had she worked continually since her date of employment with Respondent.

A good reference letter in a form agreed upon by the parties which Respondent will use exclusively when responding to requests for information by prospective employers.

Expungement from Complainant's personnel file of material relating to Complainant's termination, the filing of this charge and disposition thereof, and certain other material of which Complainant will provide photocopies within the next few days.

Back pay in the amount she would have earned had she been recalled from medical leave

when first released by her physician in August 1978, with any increases which would have accrued to her, minus social security benefits, the amount of which she will provide within the next few days (she received no unemployment compensation, and although looking for work is currently unemployed)

Marilyn T. Kuhr
Staff Attorney

N-1

CATERPILLAR TRACTOR CO.

Peoria, Illinois 61629

October 12, 1979

Mr. Steven Blaser
Fair Employment Practices Commission
#3 West Old State Capitol Plaza
2nd Floord, Myers Bldg.
Springfield, IL 62701

Re: Maura Burche vs. Caterpillar Tractor Co.

Dear Steve:

Enclosed are the applications of persons hired into the Class XI job from August 1, 1978 through March 30, 1979 per your request.

We wish to emphasize the following to avoid any misunderstanding or misinterpretation by FEPC:

1. Mr. Tenhaeff was placed in an opening in an area which places him in contact with Messrs. Colton and Kapraun. This is the area where Ms. Burche said she would not go and where various doctors advised she should not be.

2. Ms. Setterlund, whose degree is in mathematics,

does statistical analysis on engine tests, a job Ms. Burche clearly is not qualified for.

3. Ms. Myers does statistical analysis work on engine tests also.

4. Mr. Montgomery was placed in Ms. Burche's former work area.

5 & 6. Mr. Parrish and Mr. Matzke are both involved in engine testing and have educational background for that area. Ms. Burche does not.

7, 8 & 9. Mr. Leavers, Mr. Riebschlager and Mr. Minter are all in electronics/controls and have the educational background for such jobs. Ms. Burche does not.

10. Mr. Bruell is in vehicle structure testing and has extensive related military training and experience. Ms. Burche does not.

I trust this additional information will enable you to complete your recommendation on this matter.

Very truly yours,

Bill Mastronardi
Assistant to Manager
Equal Opportunity Programs

WEMastronardi
Telephone: (309) 675-4932
tiw

Encls

INVESTIGATION REPORT

FEPC No. 1979SF0220 EEOC No. 051790541

COMPLAINANT

Maura Burche
Davenport, Iowa

RESPONDENT

Caterpillar
Tractor Company
Mossville

I. Recommendation

1. Lack of Jurisdiction
2. Substantial Evidence
3. Substantial Evidence

II. Action/Basis/Section

1. Harassment/sex(female), national origin (Romanian)/3(a)
2. Failure to recall from medical leave/sex (female), national origin (Romanian), mental handicap (Paranoia)
3. Termination/mental handicap (Paranoia)/3 (a)

III. Steve Blaser/drn

M. Tasch/MTK Marilyn Kuhr 10/9/79

IV. Dates

Alleged Violation 1. 3/75 - 4/22/77

2. 8/18/78 - 3/26/79 3. 3/26/79

Charge Filed 11/9/78

Fact Finding Conference 2/23/79

Report 10/1/79

Stipulation 10/23/79

V. Resondent's Type Of Operation

Provide test and evaluation support to all domestic Engineering Department and conduct fundamental long-range research for Respondent.

VI. Union Involvement

Employees in Complainant's category are not represented by a union at this location.

VII. Employment Data

From EEO-1 Dated 9/25/78:

Total Employees: 2,323

Female 232 (10%)

Total Employees in Complainant's class,

Technician: 384 Female 36 (9.4%)

VIII. Allegations

Complainant alleges that while working at Respondent she was harassed by co-workers, who wrote sexual terms on a machine she used in her work and joke about her being from Romania. She informed Respondent of this but Respondent refused to take corrective action.

Complainant alleges this harassment aggravated mental health problems, resulting in a medical leave from which Respondent would not recall her, despite releases from several physicians.

Respondent finally recalled Complainant to a lower - paying clerical position, rather than a technical position, and terminated her when she refused on grounds it was inappropriate accomodation of her handicap.

IX. Response to Allegations:

Respondent denies that the Complainant was harassed. Respondent denies that the Complainant

was not recalled from Medical Leave because of her sex or national origin. Respondent maintains that the Complainant's mental handicap is related to her ability to perform her job, and that she was not recalled for this reason.

Respondent maintains that Complainant was terminated for refusing a job offer under the terms of Respondent's Medical Leave Policy.

X.

3/10/75: Complainant was hired by Respondent as a Research Technician. She was assigned to the designing and testing of synthetic rubber compounds. Complainant's salary was $287.20 per week at the time she went on medical leave.

4/22/77: Complainant went on a Medical Leave for psychiatric care.

8/18/78: Complainant was released by her doctor, Dr. Brown, to return to work. Respondent did not allow the Complainant to return to work.

3/19/79: Complainant was offered the position of Class II Clerk Routine by Respondent. The

duties of this position would have consisted of delivering computer print outs to various laboratories. The salary for this position was $251.20 per week.

3/26/79: Complainant refused the Class II Clerk Routine job offer.

3/27/79: Complainant was terminated by Respondent.

XI. First Issue

Was Complainant harassed at work because of her sex, female and national origin, Romanian?

Staff Observation

Complainant alleges on-the-job harassment, which one must infer ended on 4/22/77, when she went on a medical leave. Complainant first contacted the Fair Employment Practices Commission on 11/9/78, 566 days after the ending of the harassment.

Section 8 of the Fair EMployment Practices Act requires the filing of a charge of discrimination

within 180 days of the alleged discriminatory action. Complainant charge was filed 386 days beyond the 180-day filing period.

Conclusion

This issue is not within the jurisdiction of the Fair Employment Practices Commission.

XII. Second Issue:

Whether the Complainant was not recalled from medical leave because of her sex (female), national origin (Romanian), or because of her mental handicap (paranoia).

A. First Contested Point: Reason for not allowing the Complainant to return to work from Medical Leave in August 1978.

1. Witnesses:

Complainant

In 1977, Complainant began to receive psychiatric treatment for problems she alleges resulted from severe harassment by her co-workers. In April 1977, Complainant went on Medical Leave to

Complainant was released to return to work as of 8/18/78, with the stipulation that she not work in close proximity to the three men who allegedly harassed her: H. Kapraun, L. Clemens, and M. Calton.

Respondent insisted that Complainant be examined by three consulting doctors. In September 1978, Complainant was examined by Dr. Ward, a Psychiatrist, and Dr. Perino, a Psychologist. These two doctors released Complainant for work.

Complainant contacted Ms. Fraser, Director of Respondent's Personnel Services. Complainant was told that the decision had been made to keep Complainant on medical leave, based on information provided by Complainant's doctors, Brown and Andri, and Dr. Ward.

Complainant does not believe this decision was based on the doctor's statements, since she had copies of the correspondence sent to Re-

spondent which released her to return to work. She felt that the real reason for keeping her on Medical Leave was her mental handicap, and because of her sex and national origin.

Fraser stated that the reason Complainant was not allowed to return to work from medical leave was because of her mental handicap. Fraser said that Complainant's allegations concerning harassment because of her sex and national origin were characterized as delusional by Complainant's doctor and treated as such.

According to Fraser, the releases that Respondent received from Complainant's doctors were not completely unqualified. She said that there were some questions about the Complainant's ability to work with her previous co-workers. Because of this, Respondent requested that Complainant be examined by their consulting doctor, Dr. Ward, a psychiatrist. Fraser said she received a letter form Dr. Ward on 10/2/78 which recommended that the Complainant not be returned to the same work area

where she originally worked. Based on the recommendations from the Complainant's doctors and the recommendation of Dr. Ward, Respondent kept the Complainant on Medical Leave.

B. Second Contested Point:

Is Complainant's Handicap-paranoia related to her ability to do the job?

1. Witnesses:

a. Complainant

Complainant stated that she had no problem functioning as a Research Technician, and that she had been an excellent employee. Complainant stated that she has a Master's of Chemical Engineering Degreee, and 13 years of laboratory work experience. Complainant stated that no one had ever complained about her job performance.

Complainant stated that her problem was working with three specific people. She said that two co-workers, H. Kapraun and L. Clemens, harassed her. Her supervisor, M. Calton, let the

harassment continue. Complainant believed she would be harassed again if she had to work with them.

b. C. Fraser (Female), Manager Personnel Services

Fraser said that there were no questions concerning the Complainant's technical abilities to perform the job of Research Technician. Complainant's problem was her inability to work with two co-workers, H. Kapraun and L. Clemens, and her supervisor, M. Calton. Fraser said that the rubber testing laboratory where the Complainant worked consisted of several large rooms shared by all employees. Because of this it was not possible to assign Complainant to a position where she would not come into contact with H. Kapraun or L. Clemens. Additionally, if the Complainant was assigned to the Rubber Testing Laboratory, she would still be responsible to the same supervisor, M. Calton. Complainant's inability to work with these

people was established by the various doctors who had treated Complainant and by Complainant's own admission to Respondent's doctor.

2. Documentation

a. Letter to Respondent from E. Andri, M.D., Psychiatrist - Exhibit A -

On 6/1/78, Dr. Andri states, ". . . (Complainant) is free of overt psychiatric symptoms but still has the strong belief that she was singled out and "sabotaged" . . . She does not express any delusional trends unrelated to this area . . . I believe she cannot work in the environment that she did prior to her hospitalization . . ."

b. Letter to Dr. Asbury (of Respondent) from Dr. Andri- Exhibit B -

Dated 8/17/78, the letter was written at the Complainant's request. Dr. Andri wrote the following:

". . . (Complainant) expresses a strong desire to return to work . . ."

". . . In the past (Complainant) developed delusional preoccupations to some of her co-workers. However, presently she seems to evaluate circumstances more objectively . . . promising to make whatever personal adjustments are necessary to counter act whatever difficulties might arise . ."

c. Letter to Respondent from Complainant's Doctor, J. Brown, M.D., Psychiatrist - Exhibit C -

Dated 8/17/78. This letter states that Complainant was a patient of Dr. Brown for follow-up treatment after her hospitalization in April 1977. Dr. Brown stated that the Complainant had been free from any illness for a year and was capable of returning to work at job she was capable of performing.

d. Letter to Dr. Asbury (of Respondent) from Dr. Ward - Exhibit D -

Dated 10/2/78, this letter states Complainant was examined by Dr. Ward 9/13/78 at

Respondent's request, and was also given a pyschiatric evaluation by a clinical psychologist, Dr. Perino:

"Based on these examinations, (Complainant) would feel uncomfortable returning to the same department in which she worked before. I feel there exists enough apprehension concerning the two individuals with whom she worked that she would be quite uncomfortable in their presence again.

(Complainant) impresses me as a bright and talented lady and I am sure that there must be alternate opportunities for her at (Respondent)."

e. Letter to Dr. Asbury (of Respondent) from Dr. Ward - Exhibit E -

Dated 12/11/78, this letter was written to clarify Dr. Ward's 10/2/78 letter concerning Complainant's ability to work. Ward reiterated that Complainant should not work with Clemens or Kapraun "any other work site might well be

considered though."

f. Psychiatric Evaluation of Complainant - Exhibit F

This evaluation of the Complainant by O. Duffy Ph.D., licenced psychologist, is dated 1/10/79 and was done at the request of the U.S. Social Security Commission.

Duffy stated in this evaluation that the Complainant's chief complaint was "slight paranoia". He made the following diagnosis of the Complainant's condition: "(Complainant) does not have significant psychiatric symptoms that I can elicit." Duffy stated he could not be sure if Complainant's allegation of co-workers harassment was based on real or delusional events. He stated that with the possible exception of dealing with these two co-workers, Complainant should be able to work in a normal work environment.

g. Letter to Dr. Ashbury from J. Ward M.D., Psychiatrist - Exhibit G

Dated 3/7/79, this letter concerns the result of a second evaluation of Complainant on 3/7/79. Ward states that . . . "(Complainant) could work, however, I would state very strongly that she should not work in the presence of the three people named above." (Larry Clemens, Hank Kapraun and Complainant's former Supervisor, M. Calton).

h. Complainant's Initial Performance Evaluation - Exhibit H

Dated 4/10/75 this evaluation is signed by M. Calton, Complainant's supervisor, and shows:

Quantity of work - Excellent

Quality of work - Between Excellent and Above Average

Safety Performance - Between Above Average and Good

Initiative - Between Excellent and Above Average

Attendance - Excellent

Under the heading of "Comments on your Recommendation to Retain or Separate this Employee" Calton wrote the following:

"There is no question that (Complainant) is capable, hard-working, has excellent motivation and initiative and can benefit our group. She is aggressive and somewhat demanding. These qualities are of course, laudable if properly controlled. If I had only technician working for me (Complainant) might well be my choice."

i. Complainant's Performance Evaluation, dated 8/25/75 - Exhbit I

In this evaluation M. Calton, Complainant's supervisor, recommends Complainant for a merit increase.

Under the heading of "Reasons for the above action Calton stated in part the following:

". . . (Complainant) is perhaps the most devoted hardest working technician that I have

known. Her knowledge of her work is impressive. I have rated her down (at this time) in two areas - safety practice and cooperation with others . . . She has made progress and I believe will continue to do so. In view of (Complainant's) progress and her excellent abilities and work output, I recommend the pay increase noted above."

Examination of the section on performance evaluation shows the following:

Quantity of work - Excellent

Quality of work - Above Average

Safety - Between Good and Below Average

Initiative - Above Average

Job Conduct - Between Average and Good

Attendance - Between Excellent and Above Average

j. Progress Report for Complainant, dated 4/2/76 - Exhibit Q

This documents that Complainant's supervisor had "cautioned" Complainant that her belief that she was being ridiculed by co-workers was diminishing her effectiveness and did not appear to be based on fact.

k. Progress Report for Complainant, dated 5/28/76 - Exhibit R

This follows up on the above "caution" to Complainant (Exhibt Q), and reports that Complainant's supervisor changed the nature of Complainant's assignments because Complainant "had told me several times that the strain and/or responsibility . .was perhaps excessive . . . " Thereafter he kept her "quite busy doing useful work at a (technician) level" and found Complainant "better adjusted, less nervous, and it is apparent there is much less friction between her and co-workers.

C. Third Contested Point:

Could Respondent have accomodated Complainant

by placing her elsewhere in the Company?

1. Witnesses:

a. Complainant:

Complainant stated that after she had been released in August, 1978, she informed C. Fraser, Manager Personnel Services, by phone that she was willing to relocate if that was necessary for her to return to work. She also told Fraser that she was willing to take a lower paying position as an entry level technician in another laboratory if that was necessary for her to be able to return to work away from H. Kapraun, L. Clemins, and M. Calton. Complainant stated that Respondent has 16 laboratories in the Peoria area and also in Davenport and other places. Complainant said that there were no job offers made to her between 8/18/78, date of release, and 3/19/79. Complainant said that on 3/19/79 she was offered a Class II Clerk Routine position. This was done verbally by phone by C. Fraser, and was confirmed by letter.

She was informed that the duties she would have to perform would be to deliver computer printouts to the various laboratories at the pay of $251.20 per week.

Complainant said that this position was not in line with her education, training and work experience. She has a Master of Chemical Engineering degree, and 13 years of laboratory experience. The position also paid less than what she had been making 2 years previously. Complainant alleges that if she had been returned to a Research Technician position she would have been paid a substantially higher salary.

b. William Mastronardi (Male), Assistant to the Manager of Equal Opportunity Programs

Mastronardi stated that he was involved in the attempt to find Complainant a position which wuld accomodate the Complainant's mental handicap. He said that Respondent was aware that

the Complainant was willing to transfer to a different plant or accept a lower-paying position, which would be against Respondent's established policies. He said Respondent would require another plant to accept an employee only in exceptional circumstances, such as a mass lay-off.

Mastronardi said that after the Complainant had been examined for the second time by Dr. Ward, in March of 1979, it was decided that the Complainant's condition was not likely to improve. It was decided that the Complainant would not be able to return to her original job in the near future. It was decided to return the Complainant to a position which she could perform without any additional training. At the time when the decision was made, the only position available that the Complainant could perform without additional training was the Class II Clerk Routine position. This position was offered to the Complainant on 3/19/79.

Any offer of a position, other than Research Technician, would have been a demotion. Respondent's policy is to demote any employee only if he/she were unable to perform his/her job. Complainant's problem was not related to her technical ability to perform the duties of a Research Technician.

c. C. Fraser (Female), Manager Personnel Services

Fraser states that there is no position at the facility where Complainant worked that is equivalent to her position of Research Technician and does not require contact with Kapraun, Clemins, and Calton. Fraser further states that there have been no opening at their other facilities for comparable positions for which Complainant is qualified.

For these reasons Complainant was kept on Medical Leave until the position of Class Ii Clerk became vacant in 1979; this position was

offered to Complainant on 3-19-79. When Complainant refused this position, she was terminated in accordance with Respondent's personnel policy.

Fraser stated that Respondent did attempt to find a position in oter plant for her by sending the Complainant's personnel file to other plants, to consider her fo employment. Other plants were not required to take her since each plant did its hiring separately. Fraser received negative response. She admitted that the personnel file sent to the various plants included memorandum dealing with the Complainant's hospitalization and the events which led to it, tough Fraser felt that this did not affect any various decisions not to hire Complainant.

Fraser's list of openings for research Technician for period 8/18/78-3/19/79:

Date of Opening	Division	Salary
10/23/78	Engine Development	356.00
10/16/78	Applied Mechanics	326.80
10/30/78*	Engine Component Testing	290.80
02/19/79	Excavator & Tractor	273.20
01/01/79	Excavator & Tractor	337.60
01/15/79	Vehicle Components	356.00
02/05/79	Engine Components	320.00
01/03/79*	Power Plant Lab	273.20
01/08/79	Engine Component Testing	284.00
01/08/79	Vehicle Testing	306.00
01/08/79	Engine Component Testing	284.00

Fraser maintains that these positions are in specialized areas, such as Vehicle Components, Electronics, etc., which require a mechanical background, which Complainant lacked.

c. Entry Level Technician Positions

filled between 8/18/78 and 9/13/79. (Exhibits L1 - L7)

Respondent has filled 7 entry Level Technician Positions since Complainant was released to return to work.

3. Staff Note:

Respondent would not supply any information concerning available openings for Technician positions at plants other than Complainant's place of employment. The reason given was that each plant is a separate hiring entity and could not be forced to accept an employee from another plant except in exceptional circumstances.

C. Forth Contested Point:

Whether Respondent discriminated on the basis of Sex and National Origin in the hiring of individuals into entry level Research Technician positions?

1. Witnesses:

a. Complaint

Complainant contends that Respondent discriminates against hiring females and individuals of non-American origin into entry level technician positions. She based this allegation on the following:

1) She was the only female technician in the laboratory where she worked.

2) Respondent would not let her return from medical leave into an entry level technician position.

3) Respondent has hired males, Kapraun and Clemins, into entry level technician positions with only a high school degreee, where as she has a Master of Chemical Engineering degree.

b. C. Fraser (Female), Manager of Personnel Services

Fraser denied that Respondent discriminates against applicants for entry level Research Technician positions, on the basis of either sex, female, or on the basis of national origin.

Fraser maintained that Respondent does not consider national origin during the hiring process with two exceptions. The first exception is to verify that if a person is not a U.S. citizen that they have the appropriate visa to allow them to work for Respondent. The second exception is that Respondent keeps track of the number of Spanish sur-named individuals for Equal Employment Opportunity Commission compliance requirements. She further maintains that Respondent had a good proportion of females, as five (36%) of the 14 entry level technician positions. Fraser agreed that Kapraun and Clemins were hired into entry level technician positions without a college degree. She maintained that a college degree is not necessary for an entry level position but that some college is required. She said both Kapraun and Clemins have some college experience.

2. Documentations

bent Entry Level Laboratory Technicians (Exhibit M1 - M14)

Respondent submitted as evidence the personnel histories of all individuals presently employed as entry level technicians at Complainant's former work site.

Examination shows that Respondent employs 14 entry level technicians. Of the 14 technician positions five (36%) are filled by females.

b. Employment Applications for Kapraun and Clemins (Exhibits N1 - n21, 14 pages)

Examination of Clemins' and Kaprun's employment applications for educational experience shows the following:

Clemins 3 years college Subject: Industrial tech.

Kaprun 3 semesters college Subject: Business Management

Complainant was released to return to work from a medical leave on condition that she not have to work with three former co-workers. Complainant was willing to relocate or accept a lower-paying job to satisfy this medical restriction.

Respondent admits Complainant's performance as a Research Technician was above average, but claims her mental handicap would prevent her from performing her duties. It therefore offered Complainant a job delivering computer print-outs, approximately 221 days after she was released to return to work.

Although there is insufficient evidence to show Respondent discriminates in the hiring of technicians who are female or Romanian, there is evidence that it did not make an effort to reinstate Complainant in a technician position because of her mental handicap. An entry level position which Complainant was willing to accept was filled 1/8/79. Respondent refused to provide information

reasonable given Respondent's size to infer that both entry level and Research Technician positions were available after Complainant's release to return to work.

Respondent admitted that under exceptional circumstances they have required other plants to accept employees from other locations. Because of the above it is recommended that a finding of substantial evidence be entered.

XII. Third Issue:

Termination

A. Contested Point:

Reason for Complainant's termination.

1. Witnesses:

a. Complainant

Complainant said C. Fraser informed her of a Class II Clerk Routine position on 3/19/79 and that she refused this position on 3/26/79. She was told that the position would require her to de-

at $251.20/week. Fraser told her that if she did not report to work she would be terminated.

Complainant stated that when she was terminated on 3/26/79 by Respondent, she was told that the reason was for her failure to report back to work. Complainant felt that she was terminated because of her handicap, since Respondent did not offer a suitable position equivalent to her original position, either at the site where she worked or at a different plant. She had also said that an entry level position would have been suitable if necessary to get her back to work away from the three co-workers with whom she could no longer work.

b. Mastronardi (male), Ass't to Manager of Equal Opportunity Programs

Mastronardi said that when it was decided to offer the Complainant the Class II Clerk Routine position it was also decided to terminate the Complainant if she refused this position. He

said this was told to C. Fraser, who made the job offer.

c. C. Fraser (Female), Manager Personnel Services

Fraser said that Complainant was offered a Class II Clerk Routine position on 3/19/79. Complainant was contacted by her on the day that the Complainant was scheduled to report to work. Complainant told Fraser by phone that she was not going to accept the Class II Routine position. Fraser said that she informed Complainant that failure to report for work would result in termination effective 3/26/79. Fraser said a letter was sent to the Complainant confirming her termination.

2. Documentation

a. Letter to Complainant from Respondent Concerning a job offer, (Exhibit C)

Dated 3/19/79, this letter states that the Complainant was being offered a Class II Clerk Routine position; Complainant was expected to report for

work on 3/26/79. The salary for this position was $251.20/week plus a $44.00/month cost of living adjustment.

b. Letter to Complainant from Respondent Concerning Complainant's termination (Exhibit P)

Dated 3/27/79, this letter confirms a phone conversation between Respondent and the Complainant concerning the Complainant's refusal of the Class II Clerk Routine position on 3/26/79. The letter stated that since the Complainant failed to report for work on 3/26/79, she was terminated and should return corporate property and keys, in her possession, and pick up her personal belongings.

B. Conclusions

Respondent admits that the Complainant was terminated for refusing to accept a Class II Clerk Routine position on 3/26/79. This position was offered to the Complainant so that she could return to work from medical leave. Complainant refused this position as insufficient accomodation since it

was both lower-paying, and unrelated to her education, training, and work experience.

Respondent kept the Complainant on medical leave for eight months after her doctors had released her to return to work, and in this period Respondent filled at least one position for which Complainant was qualified, which was related to Complainant's background, was better-paying than the Class II Clerk Routine position, and would not have required Complainant to have contact with her three former co-workers.

Respondent has refused to provide data on Technician positions filled at other locations than the site where Complainant had previously worked. Considering the size of Respondent's operation, it is reasonable to infer that Respondent filled positions similar to Complainant's original position at other plants, as well as entry-level positions which Complainant would have accepted. Respondent was aware that Complainant was willing to relocate

if necessary.

It is therefore recommended that a finding of Substantial Evidence be entered.

FEPC No. 1979SF0220 EEOC No. 051790541

COMPLAINANT RESPONDENT

Maura Burche
Davenport, Iowa

Caterpillar Tractor
Company, Mossville

I. Recommendation

A. Substantial Evidence B. Substantial Evidence C. Lack of Jurisdiction

II. Action/Basis/Section

A. Failure to recall because of sex/female, National Origin - Romanian, Mental Handicap - Paranoia/3(a) B. Termination because of Mental Handicap-Paranoia/3(a) C. Harassment because of Sex/female, and National Origin/Romanian/3(a)

III. Steven Blaser/cvh

IV. Dates

Alleged Violation 8-75 and Continuing

Charge Filed 11-9-78, Fact Finding Conference 2-23-79, Report 10-1-79

V. Respondent's Type of Operation

Provide test and evaluation support to all domestic Engineering Departments and conduct fundamental long-range research for Respondent.

VI. Union Involvement

Employees in Complainant's category are not represented by a union at this location.

VII. Employment Data

From EEO-1 Dated 9-25-78:

Total Employees: 2,323 Female 232 (10%)

Total Employees in Complainant's class, Technician: 384 Female: 36 (9.4%)

VIII. Allegations

Complainant further alleges that Respondent failed to recall her from medical leave because of her Sex/female, National Origin/Romanian, and Mental Handicap/paranoia. Complainant maintains that her handicap/paranoia does not effect her ability to work if reasonably accomodated.

Complainant also alleges that she was terminat-

ed because of her sex/Female, National Origin/Romanian, and Mental Handicap/paranoia. Complainant states that she was told that she was terminated for refusing a job offer under terms of Respondent's Medical Leave Plan. Complainant alleges that the job offer was frivolous, not a reasonable accomodation and merely an attempt to get her off Respondent's Medical Leave roster.

Complainant alleges that while working at Respondent she was harassed by co-workers because of her sex/Female, and National Origin/Romanian. Complainant maintains that she informed Respondent of this harassment but that Respondent refused to take corrective action.

IX. Respondent to Allegations:

A. Respondent denies that the Complainant was not recalled from Medical Leave because of her Sex/Female, or National Origin/Romanian. Respondent maintains that the Complainant's Mental Handicap/paranoia is related to her ability to perform her

job and that she was not recalled for this reason.

B. Respondent futher denies that the Complainant was terminated because of her Sex/female, National Origin/Romanian or Mental Handicap/paranoia. Respondent maintains that the Complainant was terminated for refusing a job offer under the terms of Respondent's Medical Leave Policy. Respondent maintains that the job offered to the Complainant was a reasonable accomodation.

C. Respondent also denies that the Complainant was harassed because of her Sex/female or her National Origin/Romanian.

X. Uncontested Facts:

3-10-75 Complainant was hired by Respondent as a Research Technician. She was assigned to the designing of and testing of synthetic rubber compounds. Complainant's salary was $287.20 per week at the time she went on medical leave.

4-22-77: Complainant went on Medical Leave of Absence for a psychiatric problem.

8-18-78: Complainant was released by her doctor, Dr. Brown, to return to work; Respondent did not allow the Complainant to return to work.

3-19-79: Complainant was offered the position of Class II Clerk Routine by Respondent. The duties of this position would have consisted of delivering computer print outs to various laboratories. The salary for this position was $251.20 per week.

3-26-79: Complainant refused the Class II Clerk Routine job offer.

3-27-79: Complainant was terminated from Respondent.

XI. First Issue:

Whether the Complainant was not recalled from medical leave because of her Sex/female, National Origin/Romania, or because of her Mental Handicap/paranoia.

A. First Contested Point:

Reason for not allowing the Complainant to re-

turn to work from Medical Leave in August 1978.

In 1977, Complainant began to receive psychiatric treatment for problems resulting from severe harassment by her co-workers. (Complainant alleges that she was harassed because of her Sex/female and National Origin/Romanian - see Issue 3.) In April 1977, Complainant went on Medical Leave to continue treatment.

Complainant was released to return to work as of 8/18/78, with the stipulation that she not work in close proximity to the three men who allegedly harassed her: H. Kapraun, L. Clemins, and M. Calton.

Respondent insisted that Complainant be examined by their consulting doctors. In September 1978, Complainant was examined by Dr. Ward, a Psychiatrist, and Dr. Perino, Psychologist. These two doctors released Complainant for work.

Complainant contacted Ms. Fraser, Director of Respondent's Personnel Services. Complainant was

told that the decision had been made to keep Complainant on medical leave, based on information provided by Complainant's doctors, J. Brown, Andri and Dr. Ward.

Complainant felt that she was on Medical Leave because of her Sex and National Origin; not because of the doctors' recommendations. She did not believe the decision was based on the doctors' statements as she had copies of the correspondence sent to Respondent, which released her to return to work. She felt that the real reason for keeping her on Medical Leave was that Respondent did not want to take the necessary steps to insure that she would not be harassed due to her Sex, female and National Origin, Romanian, upon her return to work.

C. Fraser (Female), Manager Personnel Services

Fraser stated that the reason Complainant was not allowed to return to work from medical leave, was because of her mental handicap. Fraser said that Complainant's allegations concerning harass-

ment because of her sex and national origin were characterized as delusional by Complainant's doctor and treated as such.

According to Fraser the releases that Respondent received from Complainant's doctors were not completely unqualified. She said that there were some questions about the Complainant's ability to work with her previous co-workers. Because of this, Respondent requested the Complainant to be examined by their consulting doctor, Dr. Ward, Psychiatrist. Fraser said she received a letter from Dr. Ward on 10-2-78 which recommended that the Complainant not be returned to the same work area where she originally worked. Based on the recommendations from the Complainant's doctors and the recommendation of Dr. Ward, Respondent kept the Complainant on Medical Leave.

B. Second Contested Point:

Is Complainant's Handicap-paranoia related to her ability to do the job?

1. Witnesses:

a. Complainant

Complainant stated that she had no problem performing the functions of a Research Technician and that she had a Masters of Chemical Engineering Degree and had 13 years of experience working in laboratories. Complainant stated that no one had ever complained about her performance.

Complainant stated that her problem was working with three specific people. She said that two of her co-workers, H. Kaprun and L. Clemins, harassed her and that this harassment led to her hospitalization for psychiatric treatment. Complainant said that the third person was her supervisor, M. Calton who let the harassment continue even though she asked him to stop the harassment. Because of the harassment she had received in the past, Complainant believed that she would be harassed again if she had to work with them.

b. C. Fraser (Female), Manager Personnel Ser-

vices

Fraser said that there were no questions concerning the Complainant's technical abilities to perform the job of Research Technician, her original job. Complainant's problem was her inability to work with two of her co-workers, H. Kaprun and L. Clemins; and her supervisor, M. Calton. Fraser said that the rubber testing laboratory where the Complainant worked consisted of several large rooms which all of the employees in the laboratory share. Because of this it was not possible to assign the Complainant to a position where she would not come into contact with H. Kaprun or L. Clemins. Additionally if the Complainant was assigned to the Rubber Testing Laboratory, she would still be responsible to the same supervisor M. Calton. Fraser stated that Complainant's inability to work with her supervisor, M. Calton and with H. Kaprun and L. Clemins, was established by the various doctors who had treated Complainant.

2. Documentation

a. Letter to Respondent from E. Andri, M.D. Psychiatrist - Exhibit A -

On 6/1/78, Dr. Andri states,"..(Complainant) is free of overt psychiatric symptoms, but still has the strong belief that she was singled out and "sabotaged"..She does not express any delusional trends unrelated to this area..I believe she cannot work in the environement that she did prior to her hospitalization..."

b. Letter to Dr. Ashbury (of Respondent) from Dr. Andri - Exhibit B

Dated 8/17/78, the letter was written at the Complainant's request. Dr.Andri wrote: "..(Complainant) expresses a strong desire to return to work....in the past (she) developed delusional preoccupations to some of her co-workers. However, presently she seems to evaluate circumstances more objectively...."

promising to make whatever personal adjustments are necessary to counter act whatever difficulties might arise . . ."

c. Letter to Respondent from Complainant's Doctor, J. Brown, M.D., Psychiatrist - Exhibit C-

Dated 8/17/78 this letter states that Complainant was a patient of Dr. Brown for follow-up treatment after her hospitalization, in April of 1978, for psychiatric treatment. Dr. Brown stated that the Complainant had been free from any illness for a year and was capable of returning to work at any job she was capable of performing.

g. Third letter to Dr. Ashbury from J. Ward M.D., Psychiatrist - Exhibit G-

Dated 3/7/79 this letter, concerns the result of a second evaluation of Complainant on 3/7/79. Ward states that "(Complainant) could work, however I would state very strongly that shw should not work in the presence of the three people named above." (Larry Clemins, Hank Kaprun and Complainant's Supervisor, Buck Calton.)

h. Complainant's Initial Performance Evaluation (Exhibit H, 2 Pages)

Dated 4/10/75 this evaluation is signed by M. R. Calton, Complainant's supervisor, which shows:

Quantity of work-Excellent

Quality of work-Between Excellent and Above Average

Safety Performance-Between Above Average and Good

Initiative-Between Excellent and Above Average

Attendance-Excellent

Under the heading of "Comments on your Recommendation to Retain or Separate this Employee" Calton wrote the following:

> "There is no question that (Complainant) is capable, hard-working, has excellent motivation and initiative and can benefit our group . . . If I had only one technician working for me (Complainant) might well be my choice."

Calton qualified the above by stating that the Complainant might have too much aggression and am-

bition which could lead to problems with the larger work group.

i. Complainant's Performance Evaluation, dated 8/25/75. (Exhibit I, 2 Pages):

In this evaluation written by Calton, Complainant's supervisor he recommends Complainant for a merit increase.

Under the heading of "Reasons for the above action" Calton stated in part the following:

> ". . . (Complainant) is perhaps the most devoted hardest working technician that I have known . . . in view of (Complainant's) progress and her excellent abilities and work output, I recommend the pay increase noted above."

Examination of the section on performance evaluation shows the following:

Quantity of work-Excellent

Quality of work-Above Average

Safety-Between Good and Below Average

Initiative-Above Average

Job Conduct-Between Average and Good

Attendance-Between Excellent and Above Average

2. Staff Notes

Additional documents in file indicate that Complainant had problems getting along with and relating to her co-workers as early as April, 1975 (Exhibits

Complainant also was of the belief that someone," . . . a criminal person puts drugs in my food or drink at my job." (Exhib ____) Letter Complainant gave to Mr. Calton.

C. Third Contested Point:

Could Respondent have accomodated Complainant by placing her elsewhere in the Company?

1. Witnesses:

a. Complainant:

Complainant stated that after she had been released in August, 1978 she informed C. Fraser, Manager Personnel Services, by phone that she was willing to relocate if that was necessary for her to return to work. She also told Fraser that she was willing to take a lower paying position as an entry

level technician in another laboratory if that was necessary for her to be able to return to work away from H. Kaprun, L. Clemins and M. Calton. Complainant stated that Respondent has approximately 16 laboratories in the Peoria area and also has a plant in the Davenport, Iowa area where she was willing to relocate.

Complainant stated that she was not offered a position with Respondent to return to upon being released by her doctors. Complainant said that there were no job offers made to her between 8/18/78, date of release, and 3/19/79. Complainant said that on 3/19/79 she was offered a Class II Clerk Routine position. This was done verbally by phone by C. Fraser, and was confirmed by letter. She was informed that the duties she would have to perform would be to deliver computer printouts to the various laboratories at the pay of $251.20 per week.

Complainant said that this position was not an

adequate accomodation for her handicap. The Class II Clerk Routine position, Complainant states, was not in line with her education, training and work experience as the work could be done by someone with a high school degree and she had a Master of Chemical Engineering degree and 13 years of laboratory experience. The position also paid less than what she had been making 2 years previously, $251.20 per week, for the Clerk Routine position as compared to $287.20 per week as a Research Technician in 1977. Complainant alleged that if she had been returned to a Research Technician position she would have been paid a substantially higher salary.

b. William Mastronardi (Male), Assistant to the Manager of Equal Opportunity Programs.

Mastronardi stated that he was involved in the attempt to find Complainant a position which would accomodate the Complainant's mental handicap. He said that Respondent was aware that the Complainant was willing to transfer to a different plant or

accept a lower paying position. He said that both actions would be against Respondent's established policies. Mastronardi said that the only time Respondent would require another plant to accept an employee was under exceptional circumstances, such as if there was a mass lay-off.

Complainant was not offered a lesser position than Research Technician even though she was willing to accept a lesser position. Any offer of a position, other than Research Technician, would have been a demotion. Respondent's policy is to demote an employee only if he/she were unable to perform his/her job. Complainant's problem was not related to her Technical abilities to perform the duties of a Research Technician.

Mastronardi said that after the Complainant had been examined for the second time by Dr. Ward, in March of 1979, it was decided that the Complainant's condition was not likely to improve. It was decided that the Complainant would not be able to

return to her original job in the near future. It was decided to return the Complainant to a position which she could perform without any additional training. At the time when the decision was made, the only position available that the Complainant could perform without additional training was the Class II Clerk Routine position. This position was offered to the Complainant on 3/19/79.

b. C. Fraser (Female), Manager Personnel Services

Fraser states that there is no position at the facility where Complainant worked, that is equivato her position of Research Technician, and does not require contact with Kaprum, Clemins, and Calton. Fraser further states that there have been no openings at their other facilities for comparable positions, for which Complainant is qualified.

For these reasons Complainant was kept on Medical Leave until the position of Class II Clerk became vacant in 1979; this position was offered to

Complainant on 3/19/79. When Complainant refused this position, she was terminated in accordance with Respondent's personnel policy.

Fraser stated that Respondent did attempt to accomodate the Complainant by finding an equivalent position in another plant for her by sending the Complainant's personnel file to the other plants with the request that they consider her for employment if there was an opening. Fraser said that the other plants were not required to take the Complainant if there was an opening, as each plant did its hiring separately. Fraser said that the response she received were negative. She admitted that the personnel file sent to the various plants included memorandum dealing with the Complainant's hospitalization and the events which led up to it, though Fraser felt that this did not affect any of the various plants decision not to hire the Complainant.

Fraser provided a list of openings for the pos-

ition of Research Technician (Complainant's classification) for the period 8/18/78 - 3/19/79; the openings are as follows:

Date of Opening	Division	Salary
10/23/78	Engine Development	356.00
10/16/78	Applied Mechanics	326.80
10/30/78*	Engine Component Testing	290.80
2/19/79	Excavator & Tractor	273.20
1/1/79	Excavator & Tractor	337.60
1/15/79	Vehicle Components	356.00
2/5/79	Engine Components	320.00
1/3/79*	Power Plant Lab	273.20
1/8/79	Engine Component Testing	284.00
1/8/79	Vehicle Testing	306.00
1/8/79	Engine Component Testing	284.00

Fraser maintains that these positions are in specified areas, such as Vehicle Components, Elec-

tronics, etc., which require a mechanical background, which Complainant lacked.

c. Entry Level Technician Positions filled between 8/18/78 and 9/13/ (Exhibits L1 - L7)

Respondent has filled 7 Entry Level Technician Positions since Complainant was released to return to work.

3. Staff Note:

Respondent would not supply any information concerning available openings for Technician positions at plants other than Complainant's place of employment. The reason given was that each plant is a separate hiring entity and could not be forced to accept an employee from another plant except in exceptional circumstances.

C. Fourth Contested Point:

Whether Respondent discriminated on the basis of Sex and National Origin in the hiring of individuals into entry level Research Technician positions.

1. Witnesses:

a. Complainant

Complainant contends that Respondent discriminates against hiring female and individuals of non-American origin into entry level technician positions. She based this allegation on the following:

1) She was the only female technician in the laboratory where she worked.

2) Respondent would not let her return from medical leave into an entry level technician position.

3) Respondent has hired males, Kaprun and Clemins, into entry level technician positions with only a high school degree, where as she has a Master of Chemical Engineering degree.

b. C. Fraser (Female), Manager of Personnel Services

Fraser denied that Respondent discriminates against applicants for entry level Research Technician positions, on the basis of either sex, female,

or on the basis of National Origin.

Fraser maintained that Respondent does not consider National Origin during the hiring process with two exceptions. The first exception is to verify that if a person is not a U.S. citizen that they have the appropriate visa to allow them to work for Respondent. The second exception is that Respondent keeps track of the number of Spanish sur-named individuals for Equal Employment Opportunity Commission compliance requirements. She further maintains that Respondent had a good proportion of females, as five (36%) of the 14 entry level technician positions are filled by females.

Fraser agreed that Kaprun and Clemins were hired into entry level technician positions without a college degree. She maintained that a college degree is not necessary for an entry level position but that some college is required. She said both Kaprun and Clemins have some college experience.

2. Documentations

a. Personnel Histories for Incumbent Entry Level Laboratory Technicians (Exhibit M1 - M14)

Respondent submitted as evidence the personnel histories of all individuals presently employed as entry level technicians at Complainant's former work site.

Examination shows that Respondent employs 14 entry level technicians. Of the 14 technician positions five (36%) are filled by females.

b. Employment Applications for Kaprun and Clemins

Examination of Clemins' and Kapruns' employment applications for education experience shows the following:

Clemins 3 years college Subject: Industrial Tech.

Kaprun 3 semesters college Subject: Business Managment

Staff Notes

While Respondent does not maintain a list showing

the national origins of entry level technicians, three individuals listed have names implicating foreign origin, including one individual with a name which indicates slavic descent. Romanians are not of Slavic origin.

D. Conclusions:

Complainant was released to return to work by her two physicians on 8/18/78. After examining Complainant, Respondent's physician also released Complainant to return to work with one restriction that the Complainant should not work with three employees, Kaprun, Clemins, and Calton.

Respondent admits that the Complainant was willing to relocate or except a lower paying job, to satisfy the medical restriction, if that was necessary for her to return to work.

Respondent stated that Complainant was kept on medical leave after her release because of her mental handicap, paranoia until a job offer was made to Complainant on 3/27/79. Complainant was offered

a Class II Clerk Routine position on 3/27/79, 221 days after Complainant's original release to return to work. The Class II Clerk Routine job offer did not satisfy Respondent's policy in returning an employee from a leave of absence. Respondent's policy requires returning an employee to their original job or one of equivalent pay and status. The Class II Clerk Routine position was not the equivalent of Complainant's Research Technician position.

Respondent could have offered the Complainant a suitable position prior to their offering the Complainant the Class II Clerk Routine position. At Complainant's work site Respondent filled an entry level technician position on 1/8/79 that they were aware Complainant was willing to accept. Additionally, Respondent admits that they have numerous laboratories at locations other than Complainant's work site. Respondent refused to provide information concerning vacancies at these other laboratories. It is reasonable to infer, based on Respon-

dent's size, that within the 221 days, between Complainant's release and a job offer being made to her, that there were vacancies in both the Research Technician and Entry Level Technician positions at these other laboratories.

Respondent admitted that under exceptional circumstances they have required plants to accept employees from other locations.

Because of the above it is recommended that a finding of Substantial Evidence be entered on this issue.

XII. Second Issue:

Termination

A. Contested Point:

Reason for Complainant's termination.

1. Witnesses:

a. Complainant

Complainant said she was informed of a Class II Clerk Routine position, which Respondent was offering her as an accomodation, on 3/19/79 and that she

refused this position on 3/26/79 as an insufficient accomodation. Complainant stated that when C. Fraser offered her the Class II Clerk Routine position by phone on 3/19/79 she was told that the position would require her to deliver computer printouts to various laboratories at $251.20/wk. Complainant said that she was called by C. Fraser on 3/26/79, the date Complainant was scheduled to report back to work. In this conversation Fraser told her that if she did not report to work she would be terminated. Complainant told Fraser that she was not going to accept the Class II Clerk Routine position. She told Fraser that she felt that Class II Clerk Routine position was not an adequate accommodation.

Complainant stated that when she was terminated on 3/26/79 by Respondent she was told that the reason was for her failure to report back to work. Complainant felt that she was terminated because of her handicap, paranoia, as there were alternatives

to offering her a Class II Clerk Routine instead of terminating her. She said Respondent kept her on medical leave for eight months after she was released to work (8/18/78) and could have her on medical leave until suitable position became available. Complainant stated that such a position could be a position equivalent to her original position either at the Tech Center where she worked or at a different location. She also said that an entry level position would have been suitable if this was necessary to get her back to work and away from her old co-workers whom she could not work with.

b. Matronardi (Male), Assistant to the Manager of Equal Opportunity Programs

Mastronardi said that when it was decided to offer the Complainant the Class II Clerk Routine position it was also decided to terminate the Complainant, in accordance with company policy, if she refused the position. He said this was told to C.

Fraser who made the job offer.

c. C. Fraser (Female), Manager Personnel Services

Fraser said that Complainant was offered a Class II Clerk Routine position on 3/19/79. Complainant was contacted by her on the day that Complainant was scheduled to report to work. Complainant told Fraser by phone that she was not going to accept the Class II Routine position. Fraser said that she informed Complainant that failure to report to work would result in termination effective 3/26/79. Since Complainant did not report to work she was terminated effective 3/26/79. Fraser said a letter was sent to the Complainant confirming her termination.

2. Documentation

a. Letter to Complainant from Respondent Concerning a job offer, (Exhibit O)

Dated 3/19/79, this letter states that the Complainant was being offered a Class II Clerk Routine

position; Complainant was expected to report for work on 3/26/79. The salary for this position was $251.20/week plus a $44.00/month cost of living adjustment.

b. Letter to Complainant from Respondent Concerning Complainant's termination (Exhibit P)

Dated 3/27/79, this letter confirms a phone conversation between Respondent and the Complainant concerning the Complainant's refusal of the Class II Clerk Routine position on 3/26/79. The letter stated that since the Complainant failed to report to work on 3/26/79, she was terminated and should return corporate property and keys, in her possession, and pick up her personal belongings.

B. Conclusions:

Respondent admits that the Complainant was terminated for refusing to accept a Class II Clerk Routine position on 3/26/79. This position was offered to the Complainant as an accommodation to the Complainant's mental handicap, paranoia so that the

Complainant could return to work from medical leave. Complainant refused this position as being an insufficient accommodation as it was lower paying and unrelated to her education training and work experience.

Respondent kept the Complainant on medical leave for eight months, after her doctors released her, in this period Respondent filled at least one position for which the Complainant was qualified that was related to the Complainant's background and paid more than the Class II Clerk Routine position.

Respondent has refused to provide date on Technician position filled at other locations than where Complainant worked. Considering the size of Respondent's operation it is reasonable to infer that Respondent filled positions similar to Complainant's original position at other plants. Respondent was aware that Complainant was willing to relocate if it was necessary for her to return to work.

Because of the above it is recommended that a finding of Substantial Evidence be entered on this issue.

XIII. Third Issue:

Harassment

Complainant alleges on-the-job harassment, which one must infer ended on 4/22/77, when she went on a medical leave. Complainant first contacted the Fair Employment Practices Commission on 11/9/78, 566 days after the ending of the harassment.

Section 8 of the Fair Employment Practices Act requires the filing of a charge of discrimination within 180 days of the alleged discriminatory action. Complainant's charge was filed 386 days beyond the 180 day filing period.

P-1

CATERPILLAR TRACTOR CO.

TECHNICAL CENTER - PEORIA, ILLINOIS 61629

March 27, 1979

Ms. Maura Burche
1710 West 52nd Street
Davenport, IA 52806

Dear Ms. Burche:

This letter confirms our phone conversation of Monday, March 26, 1979, in which you stated you would not accept the open Class II Clerk Routine position which was offered to you in my letter of March 19, 1979.

As stated in that letter, and as I reiterated in our phone conversation of March 26, failure to return to work to the open job by March 26, 1979, cancels your leave of absence and terminates your employment with Caterpillar Tractor Co. Accordingly, this is notification that your employment with Caterpillar is being terminated effective today.

Please return your identification pass, Company

keys and any other Company property you may have in the enclosed stamped self-addressed envelope. We will hold your personal belongings left at your former work station until we hear from you as to their disposition.

If you have any questions, please call me.

Very truly yours,

Connie J. Fraser
Supervisor
Personnel Department

DJFraser
Telephone (309) 578-6124
kjr

Enclosure

Q-1

3-22-79

Caterpillar Tractor Co.
Connie Fraser
Personnel Service Supervisor
Technical Center

Dear Mrs. Fraser,

I received your letter dated on March 19, 1979 concerning the job offered to me as Class II Clerk Routine in the Printing Room, Building A- Technical Center.

With deep regret I have to refuse such offer due to the following motives:

1. Based on all medical reports I am capable to perform any job equivalent to that held before my illness.

2. I held a job as laboratory technician at Research Laboratory - Technical Center, Tire Development Building E and I can't see any reason to be transfered to another job lower paid and not in line with my education.

3. I mentioned before that I could perform

physico-mechanical tests, chemical analysis in any metalurgical laboratory or rubber testing laboratory. I could work as librarian research, I can translate very well from french and Italian and moderate from Russian languages into English from any technical literature subject.

I think that after 17 years of education I could form superior jobs than that held in the past; at least to get an equivalent job it is a modest desire. By offering me a lower paid job the discrimination against me continues.

I suffered morally alot during my employment at Caterpillar Tractor Co., due to continuous harassment from M. Calton, Clemens and Kapraun, and also financially during my illness and therefore an equivalent job and adequate treatment I think it is well deserved.

Such job could be in Peoria or Davenport where I live now and where Caterpillar Tractor Co. has another expansion this year.

Sincerely,

M. Burche

R-1

CATERPILLAR TRACTOR CO.
TECHNICAL CENTER, PEORIA, ILLINOIS 1629

March 19, 1979

Ms. Marua Burche
1710 W. 52nd St.
Davenport, IA 52806

Dear Maura:

Confirming our phone conversation of March 19, 1979, we are holding a Class II Clerk Routine position open for you in our Print Room, Building A, Technical Center. The salary is $251.20 per week plus $44.00 cost of living.

You must report to work on or before Monday, March 26, 1979, or be separated from Caterpillar Tractor Co. and your weekly disability benefits discontinued.

You should report at 7:30 a.m. to Pat Smith, Benefits, Building A, Technical Center for a Return to Work pass.

If you have any questions, please call me.

Sincerely,

Connie J. Fraser
Personnel Services Supervisor
Technical Center

Phone (309)578-6124
6392

S-1

EMPLOYEES HIRED BY CATERPILLAR

BETWEEN 10-23/78 TO 3-12/79

NAME, EDUCATION, WORK EXPERIENCE, EMPLOYED, EMPLOYMENT AS., OBSERVATION: (No one could work without training or previous knowledge)

1) Jenhaeff, Steven; Education: B.S. Chemistry, Biology; Work History: Chems. Analyse Beverages, Water, Teaching, Empl. As: Engine Development; Obs.: No Mechanical Background.

2) Setterlund, Jeanne; Education: Assoc. B.S. Math; Work History: Sales Clerk; Empl. As: Engine Component Testing; Obs.: No Statistical or Technical Ed/Work.

3) Myers, Kathleen; Education: B.A. Math History, M.S. Educ. Adm.; Work History: Teacher, Food Serving, Cashier; Obs.: No Statistical or Technical Ed/Work.

4) Montgomery, M.; Education: B.S. Biolog. Chem. Psych; Work History: Prep Biolog. Samples; Foreman, Tractor Oper., Prep. Chem. Solution; Obs.: No Knowledge In Rubber Or Tech. Ed/Work.

5) Parrish, Ph.; Education: Cert. A.S. Auto Tech.;

E. Ill. College; Work History: Worker Repair - Maint.; Obs.: No knowledge in Engine Testing.

6) Matzke, T.; Education: Assoc. 2 Y. Coll. Engine Tech; Work History: Prep Classes in Coll. Auto Mech.; Obs.: No Knowledge in Engine Testing.

7) Leavers, Ch.; Education: Technical - 2 Y. School - Broadcasting Electronics; Work History Restaurant Work, Teleph. Tech Aid, Computer; Obs.: No College, Some Tech. School, No Work Experience.

8) Riebschlager, F.; Education: Trade School, 2 Y Electronic; Work History: Molorola - Tech Test, Furniture Help; Obs.: No College, Some Tech. School, No Work Experience.

9) Winter, G.; Education: Candidate B.S. - 2 Y Mech. Eng.; Work History: Salesman, Cleaning, Inventory Computer; Obs.: Some College, No Work Experience.

10) Bruell, C.; Education: Business 1 Y. Coll. - 16 wks. Electron. Self Train.; Work History: Farming, Stockboy, Reporter; Obs.: Flying Phaut. and Plane Maintenance Doesn't Make Him Knowledgeable In Engine Testing.

Copy of Appellee's Weekly Salary

Employee Profile - Obtained from FEPC

The following are transfered employees to different Divisions, with totally different supervisers and technicians. The transfers were made while Appellant was harassed and discriminated, and was necessary to find for her a new place to work through a transfer to an other Division, instead of sending her to hospital.

Many of the transfers were made to Power Plant where Appellant could work having experience in chemical analysis as for ex. detemination of salts contained in water, also to Div. of Engraving metals where Appellant worked at Akron Equipment in Ohio.

1. Berry Thomas

Hired: 6-12-78 - Product Assambler-Div.4101

Transf.8-6-79-Lab. Tech.-Vehicl.Test Oper. Div.881

2. Booker Janeen

Hired: 11-13-78 - Assambler Div.5111

Transf.1-8-79 -Lab.Tech.-Engine Develop.

Div.872

3.Bryant Gail

Hired: 1-12-76 - Coop Trainee.....Div.919

Transf.9-26-77-Lab. Tech.Power Plant

Div.726

4.Carmody Teala

Hired: 12-22-75 - Stenographer- Div.885

Transf.9-6-76- Tech.Trainee-Power Plant

Div.724

Transf.6-19-78-Lab.Tech.C-Power Pl.Div.726

5.Brown John

Hired:10-16-78 - General Inspector,Div.144

Transf,1-15-79-Lab. Tech. Vehicle Test Oper.

Div.881

6.Knight James

Hired:4-16-79-Lab. Techn.-Vehicle Test Oper.

Div.881

7.Mackey Myra

Hired:1-5-76- Research Tech. -Div.941

Transf.1-5-76-Lab.Tech. Engraving Metal Div.854

Transf. 5-22-78-Lab.Tech.-Material & Mech. Div.927

Transf. 11-13-78-Lab. Tech. Non-Metal Mater. Div.314

8.Salander Roy

Hired 1-15-76 -Research Tech.-Metals & Mech. Div.927

Transf.5-31-76-Research Tech.Non-Met. Mat. Div.314

9.Smith Clayton

Hired:1-15-76- Research Tech. Div.941

Transf.2-2-76- same-Non Metal Mat.Div.314

Transf.4-5-76-same-Engraving Met. Div.854

Appellant could have been employed in any of the above positions.

T-1

11-9-1978

CHARGE OF DISCRIMINATION

Fair Employment Practices Commission and Equal Employment Opportunity Commission.

Ms. Maura Burche Home Tele. (309)692-0345
6811 N. Terra Vista, Apt. 404
Peoria, Illinois 61614

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME.

Caterpillar Tractor Co. Tele. (309)573-6123
Mossville, Illinois

CAUSE OF DISCRIMINATION BASED ON MY Sex (Female) and National Origin (Romanian)

DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE: August 1975 and con't.

THE PARTICULARS ARE:

I. I was hired on April 18, 1978 as a Lab Technician in Department five (Laboratory) with Caterpillar. In April 1977 I became ill and was hospi-

talized for one and one-half months. Since my illness I have been on medical leave. In July or August I was released to return to work and the Company denies me the opportunity. I was continually harassed from August 1975 to the onset of my illness, - a direct consequence of the harassment. The Company's refusal to allow me to return to work is evidence of the company's continuing failure to take action to alleviate the discrimination on part of my co-workers, and is also discriminatory in and of itself.

II. Connie Frazier, Personnel, indicates that there is no position available for me.

III. I believe I've been discriminated against on the basis of my national origin and sex in that:

A. Two co-workers, both American, Larry Clemins and hank Kapraun, mixed up some of my rubber tests in hopes I would be fired. They called me a moose from Romania, which they intend to bury as soon as possible. Hank Kapraun attempted to hit me and

wrote sexual words on the machine I worked with.

B. I repeatedly complained to my boss, Marion Calton, but he said these are only jokes, he refused to investigate any of my complaints of my work being sabotaged.

C. The Company denies me the opportunity to work again, supposedly because I am specialized in rubber testing and I am not capable of working in another place. Caterpillar constantly hires unspecialized men whom they train, but the company doesn't give me the same opportunity. There are approximately 4 or 5 other chemical laboratories at the Mossville plant, and at least 20 other laboratories in the other Caterpillar plants, in which I would be qualified to work.

D. Among the 7 people in the rubber testing department, I was the only woman, and the only person with a chemical engineering degree, other than my boss. For the majority of the time that I worked in the department before my illness, I was in a

position superior to my 5 male co-workers, and I believe that this accounts for their hostility. Several months before I left, I asked to be demoted from compounder to technician because of the harassment and frequent sabotage of my work by Clemens and Kaprauns.

CATERPILLAR TRACTOR CO. - TECHNICAL CENTER

Dr. Ward has examined this lady and feels she could be placed elsewhere in the Company, but not in her former work area. In compliance, I am forwarding her folder to other plants for review. Would you please route it to appropriate areas and return to me.

Thanks

Connie Fraser

CJFraser
Personnel Services - TCA
Ext. 6124

11-2-78

Connie - We have nothing in mind in our facility - we have a group of employees we are trying to place at present with situations which are comparable - Sorry!

Elan Schroerler
EP

V-1

Romanian Popular Republic

Minister Of Education And Culture

DIPLOMA

Nr. 113544

Tov. Chinchella G. MAURA

Born: Year 1932, Month January, Day 7

Locality: Mindresti, County Focsani, Region Calati

Graduate: Industrial Chemistry

Department: Combustibil Technology
of: Politechnical Institute
from: Bucharest, year 1956

Through the decision of commission for graduation examination of February 1957 session, she graduated as Engineer Combustibil Technology with the grade, "sufficient".

President of Commission for graduation exam

Chief Secretary

Dean

Registration Nr. of the Institute 9094/4x 1969

No. 85-607

Supreme Court, U.S.
FILED
OCT 12 1985
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

MAURA BURCHE, Petitioner,

vs.

CATERPILLAR TRACTOR CO., Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

THOMAS G. HARVEL
1400 First National Bank Building
Attorney for Respondent

WESTERVELT, JOHNSON, NICOLL & KELLER
1400 First National Bank Building
Peoria, Illinois 61602
(309) 671-3550

THEODORE R. JOHNSON
Caterpillar Tractor Co.
100 N.E. Adams Street
Peoria, Illinois 61629
(309) 675-4278
Attorneys for Respondent.

SCHNEPP & BARNES PRINTERS, INC., SPRINGFIELD, ILL.

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9pp

QUESTION PRESENTED FOR REVIEW

Whether the U.S. Court of Appeals for the Seventh Circuit erred in dismissing Petitioner's appeal pursuant to Circuit Rule 8(b)(1) for a failure to prosecute.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	i
OPINIONS BELOW	1
JURISDICTION	2
STATEMENT OF THE CASE	3
REASONS FOR DENYING WRIT	5
CONCLUSION	6

TABLE OF AUTHORITIES

Cases

Linke v. Wabash Railroad Company, 370 U.S. 626, 82 S.CT. 1386 (1962)	5
Smith v. Mossinghoff, 671 F.2d 533 (D.C. Cir. 1982)	5
Washington v. Walker, 734 F.2d 1237 (7th Cir. 1984)	5

Statutes

28 U.S.C., Supreme Court Rules, Rule 21.1 (1985)	6
28 U.S.C., Federal Rules of Civil Procedure, Rule 8(e) (1985)	6
28 U.S.C., United States Courts of Appeals, Rules 7th Circuit Rule 8(b)(1) (1985)	5
28 U.S.C §2680 (1985)	2
28 U.S.C §1254 (1985)	2

No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

MAURA BURCHE, Petitioner,

vs.

CATERPILLAR TRACTOR CO., Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

CATERPILLAR TRACTOR CO. ("Caterpillar") submits this brief in opposition to the Petition for a Writ of Certiorari filed by Maura Burche ("Burche"), Petitioner herein.

OPINIONS BELOW

The Memorandum of the United States Court of Appeals for the Seventh Circuit dismissing the Petitioner's appeal at second consideration of the case is reprinted as Appendix E to the Petition. The Memorandum of Judgment of the District Court upon second consideration directing a verdict in favor of Respondent is reprinted as Appendix G to the Petition. The Opinion of the United States Court of Appeals for the Seventh Circuit upon first consideration of the case is reprinted as pages I-1 through I-28 of Appendix I to the Petition. The District Court dismissed the Petitioner's claims at the initial consideration of the case. The opinions are not reported in West Publishing Co.'s System.

JURISDICTION

The Petitioner fails to set forth adequate requisites upon which jurisdiction of the Supreme Court may be invoked. Petitioner's reliance upon 28 U.S.C. §2680 (1985), is completely misplaced. That Section provides for exceptions to the Federal Tort Claims Procedure and has no application to the matter at hand. The Petition also invokes the jurisdiction of the Supreme Court under 28 U.S.C. §1254 (1985). However, no elements are set forth by the Petition pertaining to how §1254 purports to provide a jurisdictional basis for the Petitioner. The Petition deals almost exclusively with a discussion of 42 U.S.C. §2000(e). (Title VII of the Civil Rights Act of 1964 hereinafter "Title VII"). The action for which Burche appeals, i.e., the dismissal of her appeal, had nothing whatsoever to do with Title VII. Petitioner does not have a right to Supreme Court review by appeal under 28 U.S.C. §1254(2) because no statute was held unconstitutional by the Seventh Circuit Court of Appeals. Also, the Jurisdictional Statement of the Petition fails to provide a basis upon which discretionary review by Writ of Certiorari can be invoked by the Court under 28 U.S.C. §1254(1).

Therefore, Respondent asserts that the Petition has failed to adequately set forth sufficient jurisdictional requisites upon which to invoke the Supreme Court powers of review.

STATEMENT OF THE CASE

Petitioner Burche was hired by Respondent Caterpillar in 1975 to work as a rubber technician in and at its Laboratory located at the hiring facility designated as Caterpillar's Technical Center. In April, 1977, while so employed, Burche was hospitalized for psychiatric care and granted a medical leave from her employment due to a condition described by her physician(s) as schizophrenic paranoia. The medical leave of absence lasted from April, 1977, to March, 1979, when her physicians then agreed she was able to return to work; her physicians stipulated, however, that due to the recurrent effect of her mental illness she could not be assigned to work in any area in which three certain other employees might also be working. This restriction precluded Burche from working at her previous job location. Caterpillar searched for another job, and Burche was then offered another position away from the three employees. Burche declined to return to work in the job offered her and subsequently was terminated as having voluntarily quit her employment with Caterpillar. In 1979 Burche filed a charge with the then Illinois Fair Employment Practices Commission [which in 1980 was supplanted by the Illinois Human Rights Commission], alleging sex and national origin discrimination. That charge was cross-filed with the U.S. Equal Employment Opportunity Commission ("EEOC") pursuant to the requirements of Title VII. EEOC, in accordance with Section 706(d) of Title VII deferred action on her charge pending the outcome of her state administrative proceedings.

The state charge was thereafter amended to allege, in addition to sex and national origin, employment discrimination based on a claim of purported mental handicap. Upon an evidentiary hearing, the Administrative Law Judge recommended that the Complaint be dismissed with prejudice on March 30, 1981. The Human Rights Commission adopted the Administrative Law Judge's recommendation and dismissed the Complaint. Although that action was reviewable under

administrative review through the Illinois judicial system, Burche did not appeal from that decision. EEOC subsequently concurred in the result but in accordance with its statutory mandate issued a "right to sue" letter. Thereafter, on August 3, 1981, Burche filed a three-count Complaint in the U.S. District Court for the Central District of Illinois alleging, *inter alia*, unlawful employment discrimination under Title VII based on her female sex and her Romanian national origin. The District Court granted Caterpillar's initial pleading, a Motion to Dismiss, and dismissed Burche's Complaint in its entirety. On appeal, the Seventh Circuit Court of Appeals affirmed the District Court's decision as to two counts of the Complaint but reversed the District Court's dismissal on the pleadings as to Burche's employment discrimination claims and remanded that portion of Burche's Complaint for consideration on the merits, if any. Thereafter, the issues were joined and the matter was tried before the Court on April 12, 1984. After the presentation of Burche's case in chief, the Court in accordance with Rule 41(b) of the Federal Rules of Civil Procedure entered judgment in favor of Caterpillar as to the only issue before it, her Title VII claims. Appeal was again taken to the Seventh Circuit Court of Appeals. The Court of Appeals at the request of Burche's counsel granted three continuances or extensions of time to file Appellant's Brief. No such Brief, however, was ever filed. On November 27, 1984, the Seventh Circuit Court of Appeals dismissed her appeal pursuant to Circuit Rule 8(b)(1) for a failure to prosecute the Appeal.

REASONS FOR DENYING WRIT

There is no important question of federal law concerning the dismissal of a suit based on Appellant's failure to prosecute an Appeal to a Circuit Court of Appeals which needs to be addressed by the United States Supreme Court. Additionally, Petitioner has failed to properly comply with the United States Supreme Court Rules and the Federal Rules of Civil Procedure.

The law is well settled that federal courts have the power to dismiss a case for a failure to prosecute. *Link v. Wabash Railroad Company*, 370 U.S. 626, 734, 82 S. Ct. 1386, rehearing denied 371 U.S. 873, 83 S. Ct. 115 (1962). The *Link*, supra, decision involved a District Court's *sua sponte* dismissal with prejudice, under F.R.C.P. 41(b), of a plaintiff's suit brought for counsel's failure to prosecute. The Circuit Courts of Appeals have the same inherent authority to dismiss a case as do the Federal District Courts. Burche's attorney was given numerous extensions before the Seventh Circuit Court of Appeals dismissed the appeal pursuant to Circuit Rule 8(b)(1). Burche's Title VII case, the subject of that Appeal, had been tried on the merits. No proper Appeal was taken of that ruling to the Seventh Circuit Court of Appeals. In this Petition, Burche's sole claim hinges on her allegations that her counsel failed to prosecute her claim in the Seventh Circuit. It goes without saying that Burche is bound by her selected agent's actions. The law is well settled that a plaintiff is bound by the actions of his voluntarily chosen representative. *Link v. Wabash Railroad Company*, 370 U.S. 626, 82 S. Ct. 1386 (1962), *Smith v. Mossinghoff*, 671 F.2d 533 (D.C. Cir. 1982). No peculiar distinction has been made regarding dismissals of civil rights actions as contrasted with any other civil actions. *Washington v. Walker*, 734 F.2d 1237 (7th Cir. 1984). The United States Supreme Court stated in *Link*, supra, at footnote 10, that "if an attorney's conduct falls substantially below what is reasonable under the

circumstances, the client's remedy is against the attorney for malpractice." 370 U.S. 626, 634. Any further course of action by Burche should be limited to proceeding against her former counsel. A Petition for Writ of Certiorari is not the proper vehicle for the prosecution of her claim, if any, against her attorney.

A Writ of Certiorari must comply with the rules propounded by the Supreme Court. Burche has inserted in her petition masses of irrelevant and unnecessary material in contradiction of the "direct and concise" requirement of the Supreme Court Rules (S.Ct. R. 21.1), and the Federal Rules of Civil Procedure (FED. R. CIV. P. 8(e)). No Petition for Writ should be granted where the petitioner has failed to provide the court with a properly prepared petition. The various Circuit Courts of Appeals are not in conflict with the principles set forth herein.

A Writ of Certiorari would be inappropriate in these circumstances.

CONCLUSION

Wherefore, for all the foregoing reasons, the Petition for a Writ of Certiorari to the United States Supreme Court should be denied.

Respectfully submitted,

THOMAS G. HARVEL
1400 First National Bank Building
Attorney for Respondent

WESTERVELT, JOHNSON, NICOLL & KELLER
1400 First National Bank Building
Peoria, Illinois 61602
(309) 671-3550

THEODORE R. JOHNSON
Caterpillar Tractor Co.
100 N.E. Adams Street
Peoria, Illinois 61629
(309) 675-4278
Attorneys for Respondent.

Supreme Court, U.S.
FILED
OCT 16 1985
JOSEPH F. SPANIOL, JR.
CLERK

85-607
No.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

MAURA BURCHE, Petitioner,

vs.

CATERPILLAR TRACTOR CO., Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
RESPONDENT'S MOTION TO STRIKE
PURPORTED REVISION OF PETITION

THOMAS G. HARVEL
1400 First National Bank Building
Attorney for Respondent

WESTERVELT, JOHNSON, NICOLL & KELLER
1400 First National Bank Building
Peoria, Illinois 61602
(309) 671-3550

THEODORE R. JOHNSON
Caterpillar Tractor Co.
100 N.E. Adams Street
Peoria, Illinois 61629
(309) 675-4278

Attorneys for Respondent

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No.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

MAURA BURCHE, Petitioner,

vs.

CATERPILLAR TRACTOR CO., Respondent.

MOTION TO STRIKE

COMES NOW, CATERPILLAR TRACTOR CO. ("CATERPILLAR"), Respondent in the above-referenced cause, through Thomas G. Harvel of Westervelt, Johnson, Nicoll & Keller, one of its attorneys, and pursuant to Rule 42 and Rule 39 of Rules of the Supreme Court of the United States moves to strike the document designated but not labeled as a "Revised Petition" and mailed to CATERPILLAR's attorney of record on

or after October 1, 1985, and for a basis for this Motion, CATERPILLAR states as follows:

1. That by Order dated July 25, 1985, Hon. Justice Stevens extended until September 22, 1985, the date by which Petitioner was permitted to file her Petition for Writ of Certiorari.

2. That on September 13, 1985, counsel for CATERPILLAR received a document which, although in improper form and improper content, appears to stand as Petitioner's Petition for Writ of Certiorari; CATERPILLAR has at least treated it as such and has initiated a Brief in Opposition thereto causing the same to have been printed and subsequently mailed (filed) on October 10, 1985.

3. That Petitioner's undated document allegedly mailed on October 1, 1985, and assertedly "revising" the prior "Petition" was received by CATERPILLAR's counsel on October 8, 1985, after CATERPILLAR's Brief In Opposition

to the original document had been submitted to the printer.

4. That no authority exists for the purported revision of Petitioner's "Petition" and no authority exists for any filing of any matter whatsoever after September 22, 1985, by Petitioner, without the express direction of this Honorable Court.

5. That manifest injustice and hardship to Caterpillar would arise were the "revision" to be permitted in that Caterpillar would not be able to timely respond to the same.

WHEREFORE, Caterpillar moves the Court to enter an Order striking the purported "revised" but undated matter filed by Petitioner purportedly on or after October 1, 1985.

CATERPILLAR TRACTOR CO.,
Respondent

WESTERVELT, JOHNSON, NICOLL & KELLER

BY: Thomas G. Harvel
Thomas G. Harvel

Thomas G. Harvel
Westervelt, Johnson, Nicoll & Keller
1400 First National Bank Building
Peoria, Illinois 61602
Telephone: (309) 671-3550

Theodore R. Johnson
Caterpillar Tractor Co.
100 N.E. Adams Street
Peoria, Illinois 61629
Telephone: (309) 675-4278

Certificate of Service

The undersigned, Thomas G. Harvel, of Westervelt, Johnson, Nicoll & Keller, a member of the Bar of this Honorable Court, hereby certifies that the original and forty (40) copies of the foregoing Motion To Strike, and three (3) copies thereof were served upon the entity or party below listed by the type of mail specified by enclosing the same in an envelope with postage fully prepaid and depositing the same with the United States Postal Service on the 11th day of October, A.D. 1985, to wit:

Maura Burche (3) (Regular Mail)
5210 Division Street
Davenport, Iowa 52806

Clerk of Court (40) (Certified Mail)
Supreme Court of the United States
Washington, D.C. 20543

Thomas G. Harvel

No. 85-607 (4)

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

MAURA BURCHE, Appellant
vs.
CATERPILLAR TRACTOR Co., Appellee

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT
-JURISDICTIONAL STATEMENT-

BRIEF OPPOSING RESPONDENT'S BRIEF "IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI" AND TO RESPONDENT'S "MOTION TO STRIKE PURPOTED REVISION OF PETITION"

MAURA BURCHE
Appellant Pro Se
5210 Division St.
Davenport, IA. 52806
(319) 386-4736

BEST AVAILABLE COPY

26 pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether the rights of Appellant Maura Burche, under Fourteen Amendment-Sect.1 United States Constitution, Article III, Sect.2 of United States Constitution and Title VII, were violated by previous courts by denying Appellant's claim and relief, and accepting her employment discrimination, through a concurent process of: judicial errors, lack of legal assistance, admittance of misrepresentations by Appellee, lack of due process of law and equity.

2. Whether the Appellant's constitutional rights were violated by Appellee through Appellant's discrimination because of sex and national origine, during her work and also after returning from medical leave through: Appellee's refusal to reinstate her in an equivalent job to previous job, her discharge from her employment and the distribution by Appellee of false, de-

famatory reports regarding Appellant's work, to other potential employers, preventing Appellant of finding any other job.

3.Whether the Appellant's constitutional rights guaranteed by the First Amendment of United States Constitution and above mentioned sections of Constitution, were violated by the Court of Appeal for the Seventh Circuit, by limiting her case to a "failure to prosecute" and disregarding damaging insults addressed to her during working by some co-workers.

TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW..... 1

TABLE OF CONTENTS..... 3

TABLE OF AUTHORITIES..... 3

OPINIONS BELOW..... 6

JURISDICTION..... 7

STATEMENT OF THE CASE.....11

ARGUMENT.....12

CONCLUSION.....18

APPENDIX I (Appeal From The United States Court Of Appeal For The Seventh Circuit).....I

APPENDIX II (Clerk Office Letter Of Sept. 23,1985.....II

APPENDIX III (Clerk Office Letter Of Oct.12, 1985.....III

TABLES OF AUTHORITIES

I. Cases

Carnley v. Cochran, Fla.1962,82 S.Ct. 884

Pag.

369,U.S. 506, 8L.Ed.2d.70..... 10

City of El Passo v. Simmons, Tex. 1965, 1965,85, S.Ct. 577,379,U.S.497,13 L.Ed. 446,rehearing denied 85 S.Ct. 879,380, U.S. 926, 13 L.Ed.2d.813.....15

James Dikinson Farm Mortgage Co. v. Harry, Il. 1926,47 S.Ct. 308,273,U.S 119,71 L.Ed.569,..... 9

Mitchell v. Robert De Mario Jewlery Inc. CA. 1960, 80 S.Ct. 332,361,U.S. 288,4 L.Ed.323,.....11

Moreno v. Collins, CA.I 11,1966,362, F.2d.176.....16

Union Pac.R.Co. v. Price, Nev. 1959, 79 S.Ct.1357,360 U.S.601, 3L.Ed.2d. 1460.....10

U.S. v. Rumely App.D.C.1953,73 S.Ct. 543,345, U.S. 41,97 L.Ed.770..... 9

Watts v. Union Austriaca etc. N.Y. 1918,39 S.Ct.1,248,U.S.9,63,L.Ed.100, 3 ALR 323.....18

II. Statutes Pag.

Title VII Civil Rights Act 1964..... 8

U.S.C.A. 22, 2702(b).....10

U.S.C.A. 28, F.R.C.P. Rule 8(a)..... 9

U.S.C.A. 28,1254..... 9

U.S.C.A 28, United States Supreme Court Rules, Rule 33(7).....13

III. Constitution

United States Constitution,Article III, Section 2..... 7

United States Constitution, First Amendment..... 7

United States Constitution, Fourteenth Amendment..... 7

No.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

MAURA BURCHE, Appellant

v.

CATERPILLAR TRACTOR CO., Appellee

BRIEF OPPOSING RESPONDENT'S BRIEF "IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI" AND TO RESPONDENT'S "MOTION TO STRIKE PURPOTED REVISION OF PETITION".

MAURA BURCHE ("Burche") submits this brief opposing Brief of Respondent in Opposition to Petition for Writ of Certiorari and Motion to Strike Purpoted Revision of Petition filed by Thomas Harvel attorney for ("Caterpillar"), Appellee herein.

OPINIONS BELOW

U.S. Supreme Court Order of July 25, 1985 (Appx.A -Appeal Supreme Court).

U.S. Court of Appeal for Seventh Circuit, Order denying Appellant's Motion to Reinstate the Appeal (Appx.C - Appeal Supreme Court). Opinion of U.S. Court of Appeal at second consideration (Appx.E). U.S.District Court Memorandum upon second consideration (Appx. G-Appeal Supreme Court).

Order of U.S. Court of Appeal upon first consideration of the case (Appx. I - Appeal Supreme Court).

U.S.District Court dismissal of Appellant's claim upon first consideration of case. The opinions are not reported in West Publishing Co.'s System.

JURISDICTION

The jurisdiction of U.S. Supreme Court in this case is invoked under U.S. Constitution-Article III, Sect.2; Fourteen Amendment-Sect.1 and First Amendment.

> "The judicial power of federal courts includes all cases of law, criminal cases,civil cases and cases of equity(cases concerning asking for court action to prevent some wrong or end some wrong being done".
>
> "No state may deny any person under its government equal protection of law".
>
> "Citizens may protect themselves against damaging insults spoken or written about them, by civil lawsuits"

Appellant's case is before this court for: review of all unjust, contradictory deci-

sions of previous courts, which concured in denying Appellant constitutional equal protection of law and equity, disregarding all facts presented by Appellant, tolerating Appellant's discrimination and Appellee's false motivations;

review of Appellant's case of discrimination under Title VII of Civil Rights Act 1964, from the time she was hired by Appellee till her dismissal, establish justice and relief in this case of equity, where Appellant's constitutional rights were infringed, with severe consequences on Appellant's health, and financial losses.

review of the case because of the unconstitutional deprivation of Appellant of legal assistance and due process of law.

> "Grave constitutional questions are matter properly to be decided by Supreme Court, but only when they inescapably come before that court for adjudication; and until such time it is duty of that court to abstain from marking boundaries of congressional power or delimiting protection

> granted by Constitution". U.S. v. Rumely App.D.C.1953,73 S.Ct. 543, 345, U.S.41,97 L.Ed.770.

For the above wrong doing Appellant has no remedy, without the judgement of this court. U.S.C.A. 28-F.R.C.P. Rule 8(a) states:

> "In equity practice, the part of the bill which is intended to give jurisdiction of the suit to the court by a general averment that the acts complained of, are contrary to equity and tend to the injury of the complainant,and that he has no remedy, or not a complete remedy without the assistance of a court of equity, is called the jurisdictional statement".

Appellant's case is properly under the jurisdiction of this court on constitutional grounds and is supported by determination:

> "Where case is properly before Supreme Court on constitutional grounds the jurisdiction of that court extends to review of all questions". James Dickinson Farm Mortgage Co. v. Harry,Il.1926,47 S.Ct.308,273 U.S.119,71 L.Ed.569.

The Appellant's discrimination case,the refusal by Appellee to reinstate her in an equivalent job to her former job, the

wrongful dismissal of Appellant, are pro-perly in jurisdiction of this court:

> "The United States Supreme Court granted certiorari to decide important question whether former employee of railroad could pursue a common law remedy against railroad for damages for his allegedly wrongful dismissal after having chosen to pursue under Railway Labor Act.." Union Pac. R. Co. v. Price, Nev.1959,79 S.Ct.1351, 360 U.S,601,3 L Ed.2d.1460.

U.S. Supreme Court jurisdiction is invoked through 22 U.S.C.A.-2702(b) -Malpractice protection; Defense of civil actions by United States:

> "The U.S. Government shall defend any civil action or proceeding brought in any court against any person reffered to in subsection (a) of this section (or his or her estate) for any such damage or injury".

and also through the decision:

> "Claim of lack of assistance of trial counsel presented important constitutional question waranting the granting of certiorari". Carnley v. Cochran, Fla. 1962,82 S.Ct. 884,369, U.S.506, 8 L.Ed.2d.70.

This court has also jurisdiction when-

ever there is a contradiction between decisions of different courts:

> "Certiorari was granted to review decision of Court of Appels which was in conflict with decision of Court of Appeal for an - other circuit". Mitchell v. Robert De Mario Jewlery Inc., CA.1960,80 S.Ct.332,361,U.S.288, 4 L.Ed.2d323.

The decision of U.S. District Court dismissing Appellant's case is in flagrant contradiction with the decision of U.S Court of Appeal for the Seventh Circuit (Appx.1-24, Appeal to Supreme Court):

> "The District Court erred in dismissing Plaintiff's complaint. We hold that Plaintiff sufficiently pleaded a claim under Title VII". (Appx.I-24, Appeal to Supreme Court)

Therefore Appellant asserts that her Appeal to Supreme Court has sufficient jurisdiction requisites upon which to invoke the Supreme Court power of review and relief to compensate Appellant of damages and injuries suffered.

STATEMENT OF THE CASE

The case has been presented in the

"Appeal from the United States Court of Appeal for the Seventh Circuit" (pg.16-48).

ARGUMENT

In opposition to Appellee's "Motion to Strike", Appellant asserts as follows:

1. Appellant filed on July 9, 1985 "Application for Extention to File a Notice of Appeal and to Docket Appeal"(Appx.I), and filed a Notice of Appeal on July 17, 1985: "Appeal from U.S Court of Appeal for the Seventh Circuit"(Appx.II).

2. U.S. Supreme Court approved Appellant "to file a petition for writ of certiorari and/or for docketing an appeal" till Sep. 22, 1985.

3. Appellant timely docketed on Sept.17, 1985 in Supreme Court her "Appeal from U.S. Court of Appeals for the Seventh Circuit, Chicago,Il."

4. Office of the Clerk-Supreme Court filed the docket of Appeal but returned it

to Appellant, requesting through letter of Sept.23, 1985 (Appx. II) that "Questions Presented" in Appeal, should be the first item and the margin around each page should be at least 3/4 in.

5. In accordance with 28 U.S.C.A-Supreme Court Rules, Rule 33(7):

> "The clerk shall not accept for filing any document presented in a form not in compliance with this Rule,but shall return it indicating to the defaulting party wherein he has failed to comply: the filing however shall not thereby be deemed untimely provided that new and proper copies are promptly substituted".

Appellant acting conform clerk office of Supreme Court request, and above rule, without changing the meaning of the con - tent of her docket of Appeal presented for the first time,promptly mailed it to the clerk office, together with a dated proof of service; Therefore the Appeal was timely filed, in proper form and content and does not present any injustice or hardship for Appellee.

For the above reasons, Appellant moves the court to deny Appellee's "Motion to Strike" the Appeal.

6. Opposing to "Brief of Respondent in Oposition to Petition for Writ of Certiorari" and also to Clerk Office's letter(App. III)Oct.12, 1985, to file the document designated and entitled "Appeal from United States Court of Appeal for the Seventh Circuit" as a writ of certiorari instead an Appeal, Appellant reafirms above paragraphs 1 to 3 and 5 and asserts:

The Appeal corrected conform Clerk's Office request, is legal, in proper form and content, conform Rule 15 of F.R.C.P., terefore should be considered such as Appeal and not a writ of certiorari:

> "Provision that appeals to Supreme Court from Court of Appeals shall preclude review by writ of certiorari means only that if appeal is proper and has been taken, certiorari will not thereafter be available, but where appeal is not proper, Supreme Court will still consider

> timely application for certiorari".City of El Passo v. Simmons, Texas,1965, 85 S.Ct. 577,379,U.S.497,13 L.Ed.2d.446, rehearing denied 85 S.Ct. 879, 380 U.S. 926,13 L.Ed.2d.813.

Considering malpractice commited by her hired legal counsel Paul Kuster, resulting in dismissal of her case, Appellant was forced and better served to represent Pro Se, despite the dificulties encountered by not having a law degree.

The lack of legal assistance, malpractice and unproper handling of her case, by judges and her attorneys, showed up from the beginning of this suit and continued during all trials in previous courts.

F.E.P.C. administrative judge Linda Mac Lachlan in her order of dismissal of Appellant's claim (Appx.J18-Appeal Supreme Court) did state that complainant's attorney needed additional time to prepare the case, but made Appellant responsible of lack of proper legal assistance.

No time limitation was ever demanded by Appellant in detriment of discovery and justice, which should have been main considerations for her attorney and judge . As far as Appellant knows neither FEPC's judge or Appellant's attorney made any effort to demand the important discoveries of Appellant discrimination, as tapes, reports,declarations obtained during FEPC investigation,which
by Appellant, to help bring justice to this case.

> "It was a high penallity for innocent plaintiff to have her suit dismissed because of her counsel negligence, in which judge had not been advised as to all of pertinent facts, vacated orders dismising case and refusing to reinstate same and remanded with direction that cause of action be reinstated on calendar". Moreno v. Collins,CA. I 11,1966,362 F.2d.17

Appelant can't be bound to her attorney acts as long as his unprofessional illegal practice determine dismissal of a case

where important constitutional rights are infringed.

What Appellee is considering in Appeal as "masses of irrelevant and unnecessary material in contradiction of direct and concise requirement of the Supreme Court Rules" are uncontested facts of a cruel, illegal harassment and discrimination of Appellant, continuously covered up by Appellee's false motivations, indirectly helped by the malpractice of Appellant's attorney and by judicial errors and unjustice commited by judges.

The Appellee refused to present to the court the list of all technicians hired between Aug. 1978 to May 1979 in spite of FEPC's and Appellant's demands. Such compliance by Appellee would have brought more facts to comply with Appellee's request for "relevant,direct and concise material" and would have helped to give justice to this case. This would have been possible

only if Appellee was supoenaed, but the court refused to do so.

CONCLUSION

The Appeal is before United States Supreme Court on constitutional grounds for review, justice and relief, of all unjust decisions of previous courts, unlawful discrimination of Appellant with severe consequences for Appellant's health, life and important material damages to the present and the future.

> "This court has power not only to correct error in judgement entered below, but to make such dispositions of the case as justice may at this time require". Watts v. Union Austriaca etc.N.Y 1918, 39 S.Ct.1,248, U.S.9,63,L. Ed.100,3ALR 323.

Appellant prays the Court, conform her constitutional rights, for a speedy trial, after her case was in courts for more than five years, and also for relief to compensate justly and fully Appellant of her emotional, pshychological injuries and mate-

rial damages.

For the above alleged reasons, Appellant prays the Court to deny Appellee's "Motion to Strike Purpoted Revision of Petition" and dismiss Appellee's request to deny Appeal, formulated in "Brieff of Respondent in Opposition to Petition for Writ of Certiorari" and accept Appellant's Appeal docketed in the Supreme Court.

Maura Burche
Appellant Pro Se

5210 Division St.
Davenport, IA. 52806
(319) 386-4736

Oct.24,1985

PROOF OF SERVICE

I, Maura Burche, Appellant Pro Se, hereby certifys that three copies of the foregoing "BRIEF OPPOSING RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI AND TO RESPONDENT'S MOTION TO STRIKE PURPOTED REVISION OF PETITION" were duly served this day of Oct.24,1985 by insured mail, United States Mail,postage prepaid, upon Appellee's attorney: Thomas G.Harvel at the address: 1400 First National Bldg.,Peoria, Il. 61602.

Maura Burche
Appellant Pro Se

5210 Division St,
Davenport, IA.52806
(319) 386-4736

APPENDIX I - 1

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

No._____

Maura Burche ..... Appellant

v.

Caterpillar Tractor Co...Appellee

Jul. 17,1985
Case No. 84-1807

APPEAL FROM THE UNITED STATES COURT OF APPEAL FOR THE SEVENTH CIRCUIT, CHICAGO,IL.

Before:

Hon. Walter J. Cummins, chief Judge

Hon. William J. Bauer, Circuit Judge

Hon. Harlington Wood Jr. Circuit Judge

Comes now Plaintiff-Appellant Maura Burche represented pro-se, and hereby files her Appeal as follows:

1.This Appeal is taken from the latest ruling of Honorable Harlington Wood Jr. on Motion to Reinstate the Appeal, denied on

May 22,1985, maintaining previous ruling dated on November 27, 1984 in favor of Defendant.

2.The Clerk is hereby requested to prepare the Record on Appeal as required.

Maura Burche

Plaintiff Pro Se

Proof of Service

The undersigned Maura Burche certifies that a copy of the above document was served to Defendant's attorney Thomas Harvel at the address 1400 First National Building Peoria.Il.by depositing the document in mail box in Davenport,Ia. on July 17,1985.

APPENDIX II

OFFICE OF THE CLERK
SUPREME COURT OF THE COURT OF THE UNITED STATES, WAHINGTON, D.C. 20543

September 23, 1985

Ms. Maura Burche

5210 Division St.

Davenport, IA. 52806

Re: Maura Burche v. Caterpillar Tractor Company

Dear Ms. Burche

I am returning your appeal for the reason that the Court's requirements concerning the question presented being the very first item as well as the Rule concerning a margin of at least 3/4 of an inch around each page, have not been complied with.

Very truly yours

Joseph F. Spaniol, Jr.Clerk

By

Edward C. Schade

Assistant Clerk

cdd
Enc.

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D.C. 20543

Oct. 12, 1985

Ms.Maura Burche
5210 Division St.
Davenport, IA.52806

Re: Maura Burche v. Caterpillar
Tractor Co.
No.85-607

Dear Mr. Burche:

The petition for a writ of certiorari in the above-entitled case was docketed in this Court on September 17,1985 as No. 85-607.

Your papers have been filed as a petition for writ of certiorari. Since no notice of appeal was filed, they cannot be docketed as an appeal.

Forms are enclosed for notifying opposing counsel that the case was docketed.

Very truly yours

Joseph F. Spaniol, Jr. Clerk

By

Ruth J. Butler

Assistant Clerk

Enclosures